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Water Supply of Los Angeles, Calif.

HEARING

U.S. Congress. Senate.

BEFORE THE

COMMITTEE ON PUBLIC LANDS, UNITED STATES SENATE

SIXTY-SIXTH CONGRESS.

SECOND SESSION

ON

H. R. 406

A BILL GRANTING RIGHTS OF WAY OVER CERTAIN LANDS FOR THE WATER SUPPLY OF LOS ANGELS, CALIFORNIA

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WATER SUPPLY OF LOS ANGELES, CALIF.

SATURDAY, APRIL 17, 1920.

UNITED STATES SENATE,
COMMITTEE ON PUBLIC LANDS,
Washington, D. C.

The committee met pursuant to call, at 10 o'clock a. m., in room 215 Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), McNary, Sterling, Myers, Smith, Chamberlain, Phelan, and Kendrick.

Also present:

Mr. W. B. Mathews, of Los Angeles, Calif., and Mr. R. Woodland Gates, of Washington, D. C., counsel for city of Los Angeles; also Mr. William Mulholland, chief engineer of Los Angeles aqueduct, and Mr. E. F. Scattergood, chief electrical engineer of Los Angeles.

Mr. Galen J. Dixon and Mr. Herbert S. Beckman, of Bishop, Calif., representing Owens Valley Associated Ditches and other irrigation interests of Owens Valley.

Mr. John Keener, of Washington, D. C., counsel for proposed Inyo-Kern, Fremont, Mojave Valleys irrigation project.

Mr. John R. Dixon, of Denver, Colo., counsel for certain public utilities, including Southern Sierras Power Co. and Nevada-California Power Co.

Mr. Charles F. Consaul, of Consaul & Heltman, Washington, D. C., counsel for Owens Valley irrigation interests and associated counsel for above-named companies.

The committee had under consideration the bill (H. R. 406) amending an act entitled "An act authorizing and directing the Secretary of the Interior to sell to the city of Los Angeles, Calif., certain public lands in California; and granting rights in, over, and through the Sierra Forest Reserve, the Santa Barbara Forest Reserve, and the San Gabriel Timberland Reserve, Calif., to the city of Los Angeles, Calif.," approved June 30, 1906, as follows:

That section 1 of an act entitled "An act authorizing and directing the Secretary of the Interior to sell to the city of Los Angeles, California, certain public lands in California; and granting rights in, over, and through the Sierra Forest Reserve, the Santa Barbara Forest Reserve, and the San Gabriel Timberland Reserve, California, to the city of Los Angeles, California," approved June 30, 1906, be, and the same is hereby, amended to read as follows:

"SECTION 1. That there is hereby granted to the city of Los Angeles, California, a municipal corporation of the State of California, all necessary rights of way, not to exceed two hundred and fifty feet in width, over and through the public lands of the United States in the counties of Mono, Inyo, Kern, and Los Angeles, State of California, and over and through the Inyo and Santa Barbara National

Forests, and that portion of the Angeles National Forest situate and lying west of range six west, San Bernardino meridian, as established by the United States public land survey, and that portion of the Sequoia National Forest east of the crest of the Sierra Nevada Mountains, in said State, for the purpose of constructing, operating, and maintaining canals, ditches, pipes and pipe lines, flumes, tunnels, and conduits for conveying water to the city of Los Angeles, and for the purpose of constructing, operating, and maintaining power and electric plants, poles, and lines for the generation and distribution of electric energy, together with such lands as the Secretary of the Interior may deem to be actually necessary for power houses, diverting and storage dams and reservoirs, and necessary buildings and structures to be used in connection with the construction, operation, and maintenance of said water power and electric plants whenever said city shall have filed as hereinafter provided, and the same shall have been approved by the Secretary of the Interior, a map or maps showing the boundaries, locations, and extent of said proposed rights of way for the purposes hereinabove set forth: *Provided, however*, That the grant hereby made shall not apply to lands located in the drainage basin of Kern River or in that portion of Mono County lying north and west of the Owens River drainage basin, and embracing Mono Lake drainage basin and Adobe Valley and Black Lake drainage basin, or to lands located upon Bishop Creek or its branches in Inyo County, or to lands in the Fish Slough Reservoir site in the counties of Inyo and Mono, in said State."

SEC. 2. That section 2 of the act entitled and approved as aforesaid be, and the same is hereby, amended to read as follows:

"SEC. 2. That on or before the 31st day of December, 1922, the city of Los Angeles shall file with the register of the United States land offices in the districts where the lands traversed by said rights of way are located a map or maps showing the boundaries, locations, and extent of said proposed rights of way, for the purposes stated in section 1 of this act, and there shall also be filed within that time all desired changes of location, the amended map or maps necessary to show such changes of location to be filed in the same manner and subject to the same approval as are the original map or maps of location, but no construction work shall be commenced on any of said lands until the map or maps have been filed as herein provided and until said map or maps and the proposed plan of development have been approved by the Secretary of the Interior, and the approval by the Secretary of the Interior or any amended map or maps showing changes of location of said rights of way shall operate as an abandonment ipso facto by the city of Los Angeles, to the extent of such change or changes, of the rights of way indicated on the original map or maps: *Provided*, That any rights inuring to the city of Los Angeles under this act shall, on approval by the Secretary of the Interior of the map or maps and the plan of development referred to, relate back to the date of the filing of said map or maps with the register of the United States land office, as provided herein: *Provided*, That during the period allowed the city of Los Angeles for filing maps or applications under this act the head of the department having jurisdiction over the lands may grant easements or permits for rights of way under any act of Congress now in force or hereafter enacted, for pipes, pipe lines, canals, ditches, flumes, tunnels, or reservoirs for the conveyance, delivery, or storage of water for irrigation, mining, or domestic purposes, or for the generation of electric power, including rights of way for the construction of power plants, towers, transmission and distribution lines, for the generation and delivery of electricity, if after affording the city an opportunity to be heard, and upon notice by the city within ninety days of such possible conflict such head of department shall find that the easement or permit may be granted without destruction of or material interference with the works constructed or proposed to be constructed by the city: *Provided further*, That all rights of way herein and hereby granted and all other rights of way hereafter granted under general laws, for the purposes herein enumerated, over lands within the operation of this act, shall be with the reservation of the power to thereafter grant other rights of way by easement or permit, conflicting with such prior grants or permits for the purpose of permitting crossing of rights of way or for limited distances necessary common use of prior rights of way, under such conditions as the head of the department shall find necessary and shall determine to be properly protective against interference with and not detrimental to the construction, operation, and maintenance of the works of prior grantees or permittees.

SEC. 3. That section 3 of the act entitled and approved as aforesaid be, and the same is hereby, amended to read as follows:

"SEC. 3. That the rights of way hereby granted shall not be effective over any land upon which homestead, mining, or other existing valid claims shall have been filed or made until the city of Los Angeles shall have procured proper relinquishments of all such entries and claims or acquired title by due process of law and just compensation paid to said entrymen or claimants and caused proper evidence of such fact to be filed with the Secretary of the Interior: *Provided, however*, That this act shall not apply to any lands embraced in rights of way heretofore approved under any act of Congress, nor affect the adjudication of any pending applications for rights of way by the owner or owners of existing water rights, and that no private right, title, interest, or claim of any person, persons, or corporation, in or to any of the lands traversed by or embraced in said right of way shall be interfered with or abridged, except with the consent of the owner or owners or claimant or claimants thereof, or by due process of law, and just compensation paid to such owner or claimant: *Provided*, That the lands affected hereby shall in accordance with existing law continue to be subject to applications for homesteads, for rights of way for canals, ditches, or reservoirs, for the conveyance, delivery, or storage of water for irrigation, if same be filed in the proper United States land office prior to the filing of maps by the city of Los Angeles, showing the boundaries, location, and extent of the rights of way sought by said city: *And provided further*, That the grant hereby made shall not apply to any lands or rights of way included in any application filed by, and thereafter approved to, any person or corporation for the development and transmission of hydroelectric power in connection with any project upon which actual construction work was being performed prior to June 30, 1906, on that portion of Owens River lying above the confluence of Rock Creek and said river, and locally known as Owens River Gorge, and upon which portion construction work may have been carried on continuously since that date: *Provided*, That such applications for rights of way over or the right to use lands shall be filed within six months from the date of the passage of this act."

SEC. 4. That section 5 of the act entitled and approved as aforesaid be, and the same is hereby, amended to read as follows:

"SEC. 5. That all lands over which the rights of way mentioned in this act shall pass shall be disposed of, subject to such easements: *Provided, however*, That if the construction of said waterworks shall not have been begun in good faith within five years of the date of the approval of this act, then all rights hereunder shall be forfeited to the United States: *And provided further*, That if any power or electric works or structure to be used in connection therewith shall not be completed within five years after approval of the map or maps of rights of way for such works or structure as herein provided, or within such additional time as the Secretary of the Interior shall, in his discretion, grant, then such rights herein granted shall be forfeited as to any uncompleted portion of such works or structure, to the extent that the same is not completed at the date of the forfeiture."

SEC. 5. That said act entitled and approved as aforesaid be, and the same is hereby, amended by adding a new section thereto to read as follows:

"SEC. 8. That this act is a grant upon certain expressed conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intended to affect or in anywise to interfere with the laws of the State of California, relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired thereunder, and the Secretaries of the Interior and Agriculture, respectively, and the city of Los Angeles, in carrying out the provisions of this act, shall proceed in conformity with the laws of said State."

The CHAIRMAN. The committee will come to order. We will begin the consideration of H. R. 406, known as the Los Angeles right of way bill. I understand that there are gentlemen here who represent the city of Los Angeles, as well as other gentlemen representing other cities in the State of California, opposed to the passage of the bill.

I would like to say that, if it is possible, we would like to close these hearings a little before 12 o'clock.

If the respresentatives of the city of Los Angeles can have one speaker present the case, I shall be very glad that such a course be

followed, and if there is no objection we would like to hear whoever is to speak for the bill in behalf of the city of Los Angeles at this time.

Senator PHELAN. Before Mr. Matthews proceeds, I would like to state that April 18, 1918, I reported this bill out from the Public Lands Committee and it was passed by the Senate. It was not passed at that time by the House. Now, the House passes back essentially the same bill as passed by the Senate, and so we have considered the subject matter before.

Mr. RAKER. Might I just suggest that Mr. Kettner, in whose district this project lies, was here with Mr. Dixon and Mr. Beckman, but was called out on a matter that was arranged for a week in advance. He would like to be present but can not. I want to make that statement for the record.

The CHAIRMAN. Whom do you represent?

STATEMENT OF MR. W. B. MATHEWS, OF LOS ANGELES, CALIF.

Mr. MATHEWS. I represent the city of Los Angeles, and my relation to the city is that of special counsel, a position I have held for a good many years. Formerly I was the city attorney for that city and was such when the enterprise which this hearing covers, was initiated.

With me here as representatives of the city of Los Angeles, are William Mulholland, chief engineer of water works and the designer and builder of the Los Angeles aqueduct; E. F. Scattergood, chief electrical engineer, who designed and built the municipal power system of Los Angeles, and R. L. Chiswell, member of the council of that city.

This bill is designed to enable the city of Los Angeles to carry to completion its water and power utilities which were started and carried to partial completion under the right-of-way act of June 30, 1906, passed by Congress. The difficulty which confronts the city now is in the time limitations of that act. Despite the fact that the aqueduct was to be built over a stretch of country, something like 240 miles, through desert regions and over mountains, the act only allowed one year in which to make the original survey and select and apply for the rights of way required, and two years additional for making amendments. The aqueduct itself required about seven years to construct.

In the course of the work of constructing the aqueduct, it was found necessary, in order properly to build it and in order to keep the cost within reasonable limits, to depart from the line of the approved right of way here and there, for varying distances, sometimes a few feet and sometimes several hundred feet, and the desire of the city is, that it may have the opportunity, under an extension of time, to secure a validation of the right of way on which the aqueduct is actually built, and to give up rights of way which it has not occupied, because of the fact the aqueduct was built off of the approved rights of way. These departures aggregate something like 75 miles.

The CHAIRMAN. I would like to have you make that last statement again. I understand you to say that the aqueduct had been built off of the approved right of way?

Mr. MATHEWS. Yes, sir.

The CHAIRMAN. For what reason?

Mr. MATHEWS. Because, as I stated, in the course of construction it was found that difficulties on the ground—engineering troubles—made it necessary to depart from the approved right of way, which was 250 feet in width, and to seek safer and better locations near by. The line for a good part of the distance lies through a disturbed country that was volcanic, and it was necessary in many instances, for engineering reasons and economic reasons, to depart from the approved right of way.

The CHAIRMAN. Did you bring the question before the Interior Department?

Mr. MATHEWS. We did; but after the limitations of the act under which we were operating had expired. So we had no opportunity under the act to secure changes.

Senator PHELAN. You were obliged to build within two years, were you not?

Mr. MATHEWS. We had one year in which to make the survey over a distance of 240 miles, and two years in which to make amendments.

The CHAIRMAN. The amendments of surveys?

Mr. MATHEWS. Amendments of the surveys; yes, sir.

The CHAIRMAN. In other words, you had three years in which to determine as to the exact route you wanted to take?

Mr. MATHEWS. Yes, sir; and in view of the fact that the aqueduct took nearly seven years to build, we could not tell, except as the result of construction, where the difficulties would arise.

Senator CHAMBERLAIN. These departures were not very great, as a rule, were they?

Mr. MATHEWS. No, sir; the general course was observed, and you could not tell—if I should lay down two maps before the committee now, one showing the approved right of way and the other showing the occupied right of way, you could not tell that there was any essential difference between the two.

The CHAIRMAN. There is no particular objection to the changes made?

Mr. MATHEWS. No, sir.

The CHAIRMAN. That is not the objection that is raised against the bill?

Mr. MATHEWS. No, sir.

The CHAIRMAN. I would like you to confine your remarks to the reasons why the bill should pass as it is, with particular reference to that part of the bill to which you know there is objection, and tell us why you think the objections are not of sufficient importance to change the bill itself.

Mr. MATHEWS. Yes, sir.

Now, in connection with what I am going to say, with your permission, I will put before you a map which shows the aqueduct and power project of the city.

The CHAIRMAN. Can you tell us the number of miles the aqueduct extends?

Mr. MATHEWS. Approximately 240 miles from the intake of the aqueduct on Owens River, in Inyo County, Calif., to the city of Los Angeles.

Senator CHAMBERLAIN. That is, 240 miles from the city to the intake of the aqueduct?

Mr. MATHEWS. Yes, sir.

Senator CHAMBERLAIN. Where does that water come from?

Mr. MATHEWS. Owens River. Owens River is about 80 to 100 miles long, and is confined to two counties, Mono and Inyo Counties, Calif. It discharges into a salt lake, Owens Lake, which has no outlet. The intake of the aqueduct taps the river about 40 miles above that lake and catches the water while it is still fresh.

Senator CHAMBERLAIN. Is the objection to this coming from people who desire to utilize the waters from the same stream for other purposes?

Mr. MATHEWS. I do not think there is any controversy here at all as to the water rights. There is an interest here representing a proposed reclamation scheme involving the taking of water from a point above the region tapped by the aqueduct, the Mono Lake region, and carrying it around and delivering it into a section known as the Inyo-Kern section. The water they propose to get is water on which we have no claim and which we do not cover in our bill; and, in fact, we are expressly excluded from that section by the terms of the bill as drawn.

Senator CHAMBERLAIN. In that connection, I want to ask you and the representatives from the part of the State in which Bishop is located if it is not claimed this is interfering with the water rights of the people at Bishop or around near Bishop?

Mr. MATHEWS. I do not think there is any claim as to water rights. I do not like, of course, to state their position, but I do not think there is any question of water rights involved. As a matter of fact, this is not designed to give the city any water rights, but only a right of way over lands of the United States, and we have to depend on another authority for any water rights we wish to get. Our bill is based on other grounds than water rights.

In addition to the aqueduct we have the power project. The aqueduct has been completed at a cost of something like $23,000,000. We started, under the act of 1906, to construct power plants; but in view of the fact that the aqueduct itself taxed the city's ability to borrow money and to build, to the limit, the city was not in a financial situation to undertake on any considerable scale the development and execution of any power policy before the time limitations of the act expired. We have, however, a power system built in connection with the aqueduct which has cost us something like $10,000,000, making our total expenditures amount to about $35,000,000 for water and power in connection with the aqueduct.

The CHAIRMAN. Does this map show the transmission lines?

Mr. MATHEWS. Yes, sir; they are shown by the red lines.

The CHAIRMAN. And the power plants?

Mr. MATHEWS. Yes, sir; the blue line is the aqueduct. You will observe they follow the same general course. There is a physical condition that brings that about. Owens Valley is a very narrow valley between two mountain ranges. The valley itself is something like 8 to 12 miles in width, with the mountain ranges bordering each side.

The CHAIRMAN. How many plants have you along the transmission lines?

Mr. MATHEWS. We built, under the act itself, while the provisions of the act were still in force, three little plants which we used in

connection with the construction of the aqueduct. They are still operating. We have built, since the limitations of the act expired, one large plant down near the city of Los Angeles, about 45 miles above the city. On the map it is shown just about the town of Saugus. We built there a plant of 37,500 horsepower capacity. We are now constructing 6 or 7 miles below that plant, also along the line of the aqueduct, another plant, which will have a capacity of 28,000 horsepower, both plants utilizing the water of the aqueduct.

The CHAIRMAN. How much horsepower have you developed along the line of the aqueduct?

Mr. MATHEWS. We have built along the line of the aqueduct what we call plant No. 1, in San Francisquito Canyon, having a capacity of 37,500 horsepower. We have nearly completed a plant about 6 miles below that plant and also along the aqueduct, which will have an initial capacity of 28,000 horsepower. We have also built still farther down, and near the city, a small plant which is operated by water from the aqueduct. That plant has a capacity of something like 3,000 horsepower. The two plants first mentioned, the 37,500 and 28,000 horsepower plants, were built and stand on revocable Forest Service permits. The lands we occupy under those permits would and could have been selected under the terms of the act of 1906 if the time had not expired.

We shall, if this bill should be passed, make our selections of the rights of way which we are now occupying under the act as permanent rights of way.

I might say here, in order to give you an idea of the power project of the city, that by this bill we are restricted to the region which our aqueduct taps or traverses. It is a region which will give us a total power output of something like 245,000 horsepower. Of that amount, over one-half will be derived from water in the aqueduct itself at plants located here and there at points many miles from the streams from which the aqueduct has diverted water; in other words, something like 50 per cent of the total will come from the aqueduct itself which we have built at an expense of $23,000,000.

In addition to that, some of the power we expect to develop will be on lands which the city of Los Angeles bought from the Government at the regulation prices under the terms of the act of 1906, and bordering on streams, so as to give us the opportunity to develop power. There will be about 10 per cent of the 245,000 horsepower on streams discharging into the drainage basin of Owens River, and affording opportunity for the establishment of power plants and transmission of power along the general lines of transmission down to Los Angeles. There are fine power opportunities just over the summit of the mountains to the north of Owens Valley, but under the terms of this bill we are confined substantially to the drainage basin of Owens Valley and the territory through which the aqueduct runs, with the idea that if we wish to make a broader plan we should proceed under general laws; and, in view of the fact that we are here before Congress asking to extend the time for the completion of the water and power projects of the city, it seems fair that we should limit our efforts to the region from which the aqueduct derives its supply or through which it runs.

Senator CHAMBERLAIN. This is a municipal proposition entirely?

Mr. MATHEWS. Yes, sir; a municipal proposition entirely and built by the issuance of municipal bonds based on the taxing power of the municipalities.

Senator CHAMBERLAIN. The power that you are attempting to develop is to be utilized for what purposes?

Mr. MATHEWS. For the general purposes of the inhabitants of the city. We have a distributing system in the city now serving 10 per cent of the inhabitants. We are furnishing about three-eighths of the public street lighting of the city. We have arranged with the largest power company in the city of Los Angeles to sell its distributing system to the city. We have agreed upon the price and terms, and we are just waiting for the bonds authorized for that purpose to be passed on by the State supreme court.

Senator CHAMBERLAIN. That is for a lighting system?

Mr. MATHEWS. Yes, sir.

Senator CHAMBERLAIN. Are you going to utilize the power for street-car service?

Mr. MATHEWS. We would do so, but under the terms of the contract with the Edison Co., whose distributing system we have arranged to buy, which has the street-railway business, we are confined, for the time being, to ordinary domestic lighting and the sale of power for commercial purposes. Ultimately, as we expect, the business of supplying power to electric railways in the city will all pass into the control of the city.

Senator CHAMBERLAIN. What I want to know is, are you developing this power for the purpose of profit or to furnish the people the electric energy at cost?

Mr. MATHEWS. Substantially at cost. We use our surplus revenue to build new works.

Senator STERLING. Is the service wholly for the city of Los Angeles? Are you not furnishing other towns along the route with power?

Mr. MATHEWS. Now, as I stated before, we built under the terms of the act three small plants in Owens Valley. We are now using those to give service to the communities in that region, which is remote from the city of Los Angeles. We have, as yet, no transmission lines for bringing that current from that section. The transmission system is something that will cost many millions. In the meantime we are giving the benefit of cheap power from those plants to those little communities to their satisfaction.

Down at Los Angeles we are supplying the city of Pasadena with such power as it distributes over its municipal lines to its inhabitants. This is supplied from surplus power. Under the terms of our charter it is provided that the city may not, without the consent of the people of the city, sell its electric energy to any person or private corporation for resale. A similar provision under the act of 1906 applies to water but not power.

The CHAIRMAN. They can sell the power, however, direct to any company or consumer?

Mr. MATHEWS. Yes, sir. Owing to a very serious objection which came up to this committee when the bill was before the committee in the former Congress, a limitation of similar nature was put upon power. So, in this bill, as it is drawn, the city is not at liberty to sell either water or power to private parties for purposes of resale.

Senator STERLING. But while it may not sell for purposes of resale, it may sell for profit?

Mr. MATHEWS. It may do so, but the city's policy is not especially aimed at deriving profit either from its water or power.

Senator PHELAN. Are your rates subject to control by the California Railroad Commission?

Mr. MATHEWS. No; except as to the outside territory.

Senator PHELAN. Outside of the city of Los Angeles, you are under the authority of the State railroad commission?

Mr. MATHEWS. They assert authority, but we have not done any business where they have had occasion to assert that authority. They claim the right to regulate our rates to the outside territories.

We have supplied most of the power for building the ships of the emergency fleet for the last three years at San Pedro, and for the submarine base there.

The CHAIRMAN. Are you selling the power to manufacturing concerns?

Mr. MATHEWS. Yes, sir; to various concerns. The Goodyear Rubber Co. is establishing one of its biggest plants within the limits of Los Angeles, and it is designed to utilize the municipal service for this purpose, and it will be one of the largest consumers in Los Angeles under any system.

The CHAIRMAN. Then, your policy will be to sell your power for individual purposes, to any individual concern, company, or individual direct?

Mr. MATHEWS. Yes, sir. Our aim has been to interfere with no other interest. In the city of Los Angeles, when we came in conflict with a private corporation, we negotiated for the purchase of its plant. That is the policy of the city. The city is growing fast, and as fast as we get the money and develop this power, it will all be in use as rapidly as we can furnish it. It happens that throughout the State of California there is a power shortage as well as a water shortage. The short rainfall in the last three years has resulted in a loss of water and power. The city of Los Angeles, notwithstanding it is not under the jurisdiction of the State railroad commission, responded to an invitation which was sent out to all power companies of California, to stand together and submit themselves to the direction of the railroad commission in order to relieve this shortage in power, which obtained all over the State. The city of Los Angeles yielded to that invitation and submitted to the control of the railroad commission in that regard.

There is an extreme power shortage all over the State, and the city of Los Angeles joined with the power companies with a view to meeting that situation.

The CHAIRMAN. The Railroad Commission of California is the same as the public utility commissions in other States?

Mr. MATHEWS. Yes, sir.

The CHAIRMAN. It has the same power?

Mr. MATHEWS. Yes, sir; it corresponds very closely to them.

Now, we ask for permanent 250-foot right of way for our power transmission lines. Under the existing act we can obtain only about 40 or 50 feet. Our transmission lines will be the main source of power supply for the city of Los Angeles. The towers will be of

varying heights, from 50 to 75 feet. They will carry high voltages, and there will be a double line—two parallel lines. In order to give the requisite clearances so as to keep the lines from falling into each other or off the right of way, 250 feet seems to be necessary. Two hundred and fifty feet is the width prescribed in the act of 1906, and we have adhered to that width.

Senator CHAMBERLAIN. Does not most of this right of way pass over arid, semiarid lands and lava beds?

Mr. MATHEWS. Yes, sir; the country, for the most part, is a barren and uninhabited and valueless country. We have some pictures of our work which, if the opportunity affords, I will be glad to have the Senators look at.

Senator CHAMBERLAIN. Does any of this go through the Big Tree section?

Mr. MATHEWS. Oh, trees are a rarity. There are no trees there except——

Senator PHELAN. Is there any tourist travel there?

Mr. MATHEWS. Yes, sir; this aqueduct has built up that country. In constructing the aqueduct, it involved building a railroad of standard gauge. That railroad has become a regular carrier for that country and the tourists go through the valley viewing the high Sierras in great numbers in their autos and they come along the aqueduct and are coming there each year in increasing numbers.

Senator CHAMBERLAIN. Free of tolls?

Mr. MATHEWS. Yes, sir; we built scores of miles of highways because the country there was not improved, which highways were built necessarily for the benefit of our work. Those have all become public highways and are used generally.

The CHAIRMAN. Who keeps them up?

Mr. MATHEWS. Most of them have been taken over by the counties and kept up, because they were well built.

Senator STERLING. This refers to a portion of the Sequoia National Forest?

Mr. MATHEWS. Yes. This bill, as you notice, keeps us out of Mono County to the north and out of Kern County to the west. We had access to that portion of Kern County under the act of 1906, but under this bill we are excluded. I might say under section 1 of the bill as drawn the county of Mono is included, where formerly it was not. There were two sections of the act of 1906 under which we could obtain lands and rights of way; that is, sections 1 and 4. Section 4 stated that if the Secretary of the Interior abandoned what was known as the proposed Owens Valley reclamation project the city of Los Angeles should have the right to purchase, at $1.25 an acre, any of the lands which had been withdrawn for the purposes of that project. The city of Los Angeles took advantage of that and bought what lands it required out of the withdrawn lands. I suppose the city in that way spent $50,000 for that purpose. In purchasing the land we bought a body of land in Mono County which the Government had withdrawn and which it held under the withdrawal act for the purposes of that proposed project. That gave us lands in Mono County, and for that reason we have asked in this bill that Mono County be included, because our lands lie in that county and in the counties of Inyo, Kern, and Los Angeles.

Senator PHELAN. The grant of 1906 was more generous than the bill which is now before us?

Mr. MATHEWS. Yes, sir.

Senator PHELAN. And limitations have been put upon you by reason of certain opposition in Kern County, the departments, and elsewhere?

Mr. MATHEWS. When the bill was referred to the departments they recommended that the city should keep out of the regions to the west and north of the Owens River drainage basin. Under the terms of the act of 1906 we were enabled to buy certain lands, and it was felt that we should be willing to proceed under general laws with respect to other lands.

Senator PHELAN. You are entirely satisfied with the bill as it comes from the House?

Mr. MATHEWS. There are two points that I wish to bring out here.

The CHAIRMAN. Do you want the committee to understand that Los Angeles is coming here asking for restricted rights, or to a repeal of some of the rights she already has?

Mr. MATHEWS. Not any repeal; but as far as any rights we wish to obtain in the future are concerned, we are content to obtain such rights in the restricted area.

The CHAIRMAN. In other words, you are content to take all the rights you really want?

Mr. MATHEWS. Yes, sir; we would have requested a broader scope if left to ourselves, but the bill was referred to the departments, and they recommended to the House a curtailment. You will notice there are recommendations made by the departments cutting down the territory in which we should obtain our rights of way.

Senator STERLING. This 250 feet includes both the aqueduct and transmission lines?

Mr. MATHEWS. Not necessarily. The aqueduct is necessarily a work built on grades, with many curves and changes of direction, whereas the power line necessarily should be built as straight as possible. But the same general course is observed in connection with both utilities, as you will observe from an inspection of the map.

Senator CHAMBERLAIN. In other words, your transmission lines are a great deal shorter than the aqueduct?

Mr. MATHEWS. Yes, sir; and they crosscut a great deal in getting down to Los Angeles.

Senator STERLING. Do you think under the terms of this bill you would be permitted to have more than 250 feet to include both the aqueduct and the transmission lines? Under the terms of the bill you are to have not to exceed 250 feet in width over and through the public lands of the United States, and the bill goes on and specifies the things that relate to the aqueduct, and then later the electric poles, lines, etc., for the transmission of power. The bill is ambiguous——

Mr. MATHEWS. Under the interpretation of the act which contains similar language we were given a right of way for the aqueduct and a separate right of way of that same width for the power-transmission lines.

The CHAIRMAN. Then you really have 500 feet?

Mr. MATHEWS. Yes, sir.

The CHAIRMAN. But not contiguous?

Mr. MATHEWS. No, sir; they are separate—sometimes many miles in distance.

Senator KENDRICK. You only require one right of way where the lines are identical?

The CHAIRMAN. That is only where they cross for a little distance in the dividing line between Mono County and Inyo County.

Mr. MATHEWS. For instance, I can give you an idea, Senator. I will show you, just to give you an idea of how crooked the aqueduct is, this picture. You will see in this picture how crooked this aqueduct gets, because of the fact it is built on grade. For instance, there is the aqueduct running across the desert [indicating]——

Senator PHELAN. But nobody is objecting on account of the width of the right of way you ask for?

Mr. MATHEWS. I do not think so—neither the departments nor any individual.

Senator STERLING. Take the distance between the transmission line and the aqueduct line a short distance above the Fairmont Reservoir——

Mr. MATHEWS. Yes, sir.

Senator STERLING. What is that distance?

Mr. MATHEWS Something like 14 miles. The aqueduct goes away around in this direction [indicating] in order to keep the grade. There is a depression between the two lines, and the aqueduct, in order to preserve the gravity features and keep to the grade, strikes away to the west.

The CHAIRMAN. What is the size of the aqueduct?

Mr. MATHEWS. It is designed to deliver 425 second feet of water and give 260,000,000 or 270,000,000 gallons of water daily.

The CHAIRMAN. That does not give an exact idea of the size.

Mr. MATHEWS. If you will pardon me, I would suggest that you permit Mr. Mulholland, who built the aqueduct, to tell you that.

Mr. MULHOLLAND. It is 10 by 12 feet, Senator—12 feet wide and 10 feet deep. There are 52 miles of tunnel work on it. In some cases, where the grade was available, we contracted the size by reason of the greater velocity.

Mr. MATHEWS. Now, I should like to say this: We started in 1910 and attempted to get an extension of time. The bill for that purpose was introduced by Senator Flint of California. That did not get very far. A similar bill was introduced in the next Congress by Senator Works. That was passed by the Senate. It got over to the House and struck a congestion and did not get through. A similar bill was passed by the Senate, introduced by Senator Johnson, and it got over to the House and there were several hearings and many changes were made in the bill in the way of concessions and modifications, in order to compose the differences between the city and the opponents of the bill. It was reported out by the House committee unanimously, but struck a congestion which blocked the way and prevented the passage of the bill, when the Congress expired.

Now, I believe Capt. Osborne then took that bill which had failed of passage and reintroduced it in the House, and following that was a hearing, with further changes, and then the bill was passed by the House and in that condition it is now before the Senate committee. So, we have been making desperate efforts for many years to get relief.

The CHAIRMAN. May I suggest that if there is nothing special now—we may want to recall you and question you further after the other witnesses have been heard—I would suggest that you suspend now and let us hear from some of the other parties.

Mr. MATHEWS. There are two changes in the bill that we want to ask.

We encountered at one point a power interest which had preceded on Owens River the enterprise of the city. It was called the Mono Power Co. It had its plant, or its proposed plant, located at the upper end of this map. We agreed with that interest before the lands committee that the provisions of the bill should not apply to the territory they were occupying so far as the completion of their development was concerned. That was agreed to, but as I stated, the bill failed because of congestion in the House, and the bill was reintroduced in the same condition it was in when it failed. Then the same power interests asked that in addition to excepting from the scope of our bill the development of their power plants there should also be excepted the distribution lines, and that they should have six months in which to file their rights of way claims, and that during that period our rights would be suspended. We objected to the words "and transmission," because while we had no question as to their rights, in connection with development, to extend the exception to the transmission would mean to blanket the entire territory we were seeking to have set aside, with this exception, in their favor for a period of six months and during that time we would not have the right to select or file our maps for rights of way, although it was true during all that time they would have a right under the general law to select their rights for transmission purposes. We objected to the words "and transmission" also from the fact that if you gave them six months of that time, and during those six months suspended our privilege of selection, we would soon find out we did not have enough time, even under this bill.

Senator PHELAN. You want those words eliminated?

Mr. MATHEWS. Yes, sir. You must bear in mind that the elimination of those words does not take away their opportunities and privileges under the general law to pick out their lands and make filings to secure what they desire.

Senator CHAMBERLAIN. Just those two words—"and transmission"?

Mr. MATHEWS. Yes, sir. I might say this, if you wll permit, that since that occurred the Mono Power Co., in whose favor the exception was made, has sold out its interests at that point to an existing operating company, and there is less reason for any exception of that kind.

The CHAIRMAN. I do not know whether it will be proper to take those words out or not. It reads:

And provided further, That the grant hereby made shall not apply to any lands or rights of way included in any application filed by, and thereafter approved to, any person or corporation for the development and transmission of hydroelectric power in connection with any project.

And so forth.

Certainly, in filing their application, they have not only made an application for the development of hydroelectric power, but for its transmission.

Mr. MATHEWS. The point we object to is in the other end of that section. They are given six months after the passage of this bill in which to file their applications. That means that the territory which is set aside for our purposes is not open for the filing of our application maps during that six months, because they are given, by the terms of the bill, six months in which to file their application, during which six months the bill would not be effective in our behalf.

The CHAIRMAN. You have three years, and you found you had to change your application. It seems to me they ought to have the right here of determining their transmission lines. Do you think six months is too long?

Mr. MATHEWS. They have the benefit of the general laws. They have had that all during the years of the consideration of this bill.

The CHAIRMAN. I suppose there has been a conflict between that company and your company?

Mr. MATHEWS. Not so far as I am aware. It does have the effect in this territory of suspending our activity——

The CHAIRMAN. It seems to me what you ought to do is to reduce the six months' period rather than take out the proposition of transmission; because that, no doubt, will be a part of their application.

Mr. MATHEWS. Yes, sir; they have that right under another law.

The CHAIRMAN. If the six months is too long, that is a question we can consider, but I do not think we want to strike out the words "and transmission."

Mr. MATHEWS. This bill, in the course of its consideration in the House committee, it seems to me, acquired a degree of inconsistency, and I think the rectification of that may dispose of some of the objections to the bill. We said before the House committee that we did not want, as against irrigation propositions, any preference or any better chance to get our claims filed than those enjoyed by parties interested in irrigation. If they got their maps filed before we got ours filed, we did not wish their priority interfered with. We only wish to have the benefit of the act as the situation stood when the maps were filed, so far as irrigation was concerned, and if we were beaten to it, as far as irrigation is concerned, we wished to have that observed and the benefit of the priority preserved to them. That was taken care of by the House committee designedly, in section 3, just before the words "and transmission" that we have been considering, where it says:

Provided, That the lands affected hereby shall, in accordance with existing law, continue to be subject to applications for homesteads, for rights of way for canals, ditches, or reservoirs for the conveyance, delivery, or storage of water for irrigation, if same be filed in the proper United States land office prior to the filing of maps by the city of Los Angeles, showing the boundaries, locations, and extent of the rights of way sought by said city.

That was perfectly satisfactory, but it seems that subsequently, without any procurement on our part, it was attempted to amend another provision of the bill in relation to power, and in making such change, irrigation was run in and subjected to a different limitation from that which was provided for in the provision I have just read.

The CHAIRMAN. That is found in section 8?

Mr. MATHEWS In section 2.

The CHAIRMAN. I think it is section 8. Section 8 reads:

That this act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in anywise to interfere with the laws of the State of California, relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses.

And so forth.

Mr. MATHEWS. That is not the one. Now, there is something there that we did not intend. We did not intend to deprive the irrigation interests of the benefit of the provisions I have just read. Referring to the bottom of page 4, beginning at the fourteenth line, you will find the point I am just referring to. It reads:

Provided, That during the period allowed the city of Los Angeles for filing mape or applications under this act, the head of the department having jurisdiction over the lands, may grant easements or permits for rights of way under any act of Congress now in force or hereafter enacted, for pipes, pipe lines, canals, ditches, flumes, tunnels, or reservoirs for the conveyance, delivery, or storage of water for irrigation, mining or domestic purposes, or for the generation of electric power, including rights of way for the construction of power plants, towers, transmission and distribution lines for the generation and delivery of electricity, if after affording the city an opportunity to be heard and upon notice by the city within 90 days of such possible conflict, such head of the department shall find that such easement or permit may be granted without destruction of or material interference with the works constructed or proposed to be constructed by the city.

In other words, we are given an opportunity under that provision of saying whether the rights of way selected by conflicting applications, would interfere with our works. It was only intended, as I understand it, that that should apply as far as power work was concerned; it was not intended that to subject irrigation to the limitation that we, after a conflicting application in behalf of irrigation was filed, should be entitled to and given an opportunity to show whether the rights of way applied for conflicted. We did not wish that nor ask it. It was only intended, as I understood it, to give this opportunity to the city to be heard where the application was in behalf of a power project, and if the committee sees fit, on its own motion, to reconcile the two provisions, it will be perfectly agreeable to the city.

Senator PHELAN. You make this suggestion anticipating objection?

Mr. MATHEWS. I did not notice that until I got to Washington, because I did not have access to the bill—to the finished bill. In line 19, page 4, it is suggested that you eliminate, beginning with the words, "pipes, pipe lines," and continue eliminating down to and including the word "for," where it occurs the second time, in line 21 of the same page, and then you will have it as I understand it was intended to be.

The CHAIRMAN. If there are any representatives of interests opposed to this bill, we would like to hear them now, and if they have any particular person they desire to present the case, the committe would like very much to have the presentation made by one person, if possible. If that is not possible, then, of course, we will have to divide the time.

Mr. JOHN R. DIXON, of Denver, Colo. There are two interests here opposed to this bill and it is impossible for them to present it through one person.

The CHAIRMAN. Will you please state to the committee whom you represent?

STATEMENT OF MR. GALEN J. DIXON, OF BISHOP, CALIF.

Mr. DIXON. I represent the irrigationists of the Owens River Valley, the Associated Ditches, and various companies, associations, and individuals of that community.

Senator McNARY. What territory does the irrigation company cover?

Mr. DIXON. The upper end of the Owens River Valley.

Senator McNARY. What is the extent of it?

Mr. DIXON. Well, I should say, as now constituted, it is something in the neighborhood of 60,000 or 70,000 acres.

Senator McNARY. Under irrigation?

Mr. DIXON. Yes, sir; it is a farming community.

Senator McNARY. Is there any chance for development of a greater area?

Mr. DIXON. Yes, sir; a restricted development—that is, as to the public lands, but a very large development as to the lands already patented.

Mr. Chairman, I would like to say that it will be difficult for me to go through the presentation of this case within the half an hour, and I would like such time as would be necessary.

The CHAIRMAN. You will proceed and we will decide later as to what we will do for further hearings.

Mr. DIXON. In order to save time, I will confine myself very largely to a prepared statement.

Mr. C. F. CONSAUL. I think it will perhaps facilitate your presentation if attention is called to this map, showing in yellow the general territory or territorial limits embraced within this pending bill. I refer to this area colored yelow on this map beginning here and taking in all this territory, about 40,000 square miles, or about the area of Indiana.

The CHAIRMAN. You mean that number of square miles are embraced in this bill?

Mr. CONSAUL. No; but involved within its territorial limits.

Mr. DIXON. Our particular interest lies in the irrigation interests of the upper end of Owens River Valley. I am secretary of the Owens Valley Associated Ditches. This may be termed a community project, organized as a corporation for the purpose of constructing our Fish Slough reservoir, and the stock is to be held solely by the mutual ditch or canal associations or companies, and irrigators of our section.

Our Fish Slough reservoir is really a community project, and this corporation was organized as a convenient method of handling the construction.

Mr. Beckman, who is here with me, and I, are here as representatives of the various associations and irrigators of Owens Valley, vitally interested in irrigation and irrigation rights of way in our section.

I wish further to state that we have absolutely no concern at all in any power projects or power companies; but we believe that by

adequate storage the power resources can be fully developed without curtailing irrigation in our valley, if storage for irrigation is provided below the power plants; and we contend that the city of Los Angeles ought not to be given such control of the public lands and storage sites as would virtually extend to the city an absolute monopoly of all the irrigation or power possibilities.

The CHAIRMAN. What is the population of Owens River Valley?

Mr. DIXON. Between 7,000 and 8,000 at the present time.

Senator STERLING. Through the whole extent of the valley?

Mr. DIXON. Yes, sir.

Senator MCNARY. What is the population that depends on the water for purpose of irrigation?

Mr. DIXON. Well, more than 5,000. Some of this population is engaged in mining, but what I speak of is largely the irrigation section of the valley.

Senator CHAMBERLAIN. Have you attempted with the authorities of Los Angeles to reconcile your differences so there will be no contest?

Mr. DIXON. We have endeavored on several occasions, and I will say I appeared before the House Public Lands Committee last year and I went over the bill as then pending and adjusted, or sought to adjust our differences at that time, and thought we had them on a fair way to adjustment. We secured several amendments that, in a way, protected us, but in the interpretation of the bill as it had formerly been passed in 1906, and in the interpretation of the bill as it was amended, there seemed to be such divergence on the part of departmental officials as to the interpretation, that we were not reaching, through the bill, the desired protection, and here, within the last 30 days or a little more, the specific clauses that were introduced at that time for our protection have been virtually annulled or repudiated upon the part of the officials of the city. They have stated to us that it was impossible for us to store water in this Fish Slough reservoir which was specifically excluded, and they also notified numbers of our citizens that they would not be permitted to store any waters in the Fish Slough reservoir or any subsidiary reservoirs at the heads of our streams, for which applications had been pending for a long period of years.

I had one of my own applications pending since 1900.

Senator MCNARY. Do you contend that the passage of this act would injure the settlers now in Owens valley, or would curtail the extension of its productivities, or limit them?

Mr. DIXON. It would limit them, according to the interpretation of the same provisions in the 1906 act and restrictions that we supposed were in the bill for our protection, are virtually no protection at all, for they ignore them. Mr. Matthews, in February, 1919, before the House Public Lands Committee, said that "we are perfectly willing you shall store water," but I supposed he is to tell you, as they recently told us, that "you have, literally, gentlemen, no water to store."

Senator MCNARY. Where is this reservoir on the map?

Mr. DIXON. Here it is on the map [indicating Fish Slough Reservoir]. Here is our proposed storage reservoir and also some of the minor locations at the head of the stream.

Senator STERLING. Does it interfere with the transmission of the power?

Mr. DIXON. No, sir.

Senator STERLING. Or their aqueduct line?

Mr. DIXON. The aqueduct line is entirely below.

The CHAIRMAN. The aqueduct intake is below Aberdeen.

Senator STERLING. What is the reason for their attitude?

Mr. DIXON. Mr. Mulholland told us it was impossible to store water in the Fish Slough Reservoir without curtailing the flow of the aqueduct, and that is one of the vital factors in this bill, as it was in the past legislation.

Senator KENDRICK. Are they seeking to divert more water than necessary? Did they have a fixed amount of water that they have appropriated?

Mr. DIXON. The flow of the aqueduct, as Mr. Matthews stated this morning, is 425 second feet at the outside limit.

Senator KENDRICK. What is the measured flow of the river?

Mr. DIXON. It is a varying flow, from eight to ten thousand up to twenty or twenty-five thousand in the normal year.

Senator STERLING. You mean inches?

Mr. DIXON. Yes, sir; inches. In the normal year, and from that up to 100,000 on flood flows, and occasionally it will reach 150 000.

Senator KENDRICK. You do not know the measurement in cubic feet?

Mr. DIXON. I could reduce it to that.

The CHAIRMAN. How long have the farmers in the Owens Valley been using this water from the Fish Slough?

Mr. DIXON. We have not been using water from the Fish Slough. Fish Slough is simply a natural depression in the upper end of the valley.

The CHAIRMAN. What is your contention?

Mr. DIXON. It is our contention that we have purposed to divert the water from the Owens River into the reservoir.

The CHAIRMAN. Was that decided upon before the construction of this aqueduct?

Mr. DIXON. Yes, sir.

The CHAIRMAN. Who filed the application for that project?

Mr. DIXON. Mr. Rowan.

The CHAIRMAN. When was that application made?

Mr. DIXON. It was filed in 1906.

The CHAIRMAN. Has anything been done by way of making it a reservoir since that time?

Mr. DIXON. There has been some work done.

The CHAIRMAN. Has there been any stored water used since then?

Mr. DIXON. Not in that reservoir; no, sir.

The CHAIRMAN. What action has the city of Los Angeles taken to secure title to the water in this slough?

Mr. DIXON. It is not the water in the slough; it is the water in the river that is involved.

The CHAIRMAN. But the water in the river was to be held in the slough for irrigation purposes.

Mr. DIXON. They have appropriated the water and diverted it.

The CHAIRMAN. The city of Los Angeles does not want this to be used as a reservoir; they want it drained?

Mr. DIXON. Yes, sir.

The CHAIRMAN. And you want it to be used as a reservoir?

Mr. DIXON. Yes, sir.

The CHAIRMAN. Is it your only reservoir?

Mr. DIXON. Yes, sir.

The CHAIRMAN. Why has it not been made into a reservoir? It is 14 years since the first act was passed and nothing has been done.

Mr. DIXON. Mr. Chairman, that reservoir was applied for by our citizens at the time the Reclamation Service came into the Owens River Valley, and in accordance with our pledges to the Reclamation Service, in relation to all our storage, we tendered that project to the Reclamation Service for its project on the Owens River Valley and it was held by the Reclamation Service for that purpose along with our other reservoirs.

The CHAIRMAN. You mean it has been withdrawn as a reservoir site by the Reclamation Service?

Mr. DIXON. Yes, sir.

The CHAIRMAN. Is it so withdrawn to-day?

Mr. DIXON. That remains to be shown by the records. We have endeavored to secure the approval of that reservoir and succeeded this last summer in getting a grant of that reservoir as a reservoir site.

The CHAIRMAN. You do not know whether it is withdrawn to-day or not?

Mr. DIXON. I do not know as to what the reclamation records show. I simply know the fact that the United States Owens River reclamation project was abandoned as a project.

Senator PHELAN. I understand, under the terms of this bill, the Fish Slough Reservoir is excepted?

Mr. DIXON. Yes, sir.

Senator PHELAN. You have your reservoir there?

Mr. DIXON. Yes, sir.

Senator PHELAN. But the city has appropriated all the water in Owens River and you can not fill it?

Mr. DIXON. They claim to have appropriated it.

Senator PHELAN. Have they appropriated it legally?

Mr. DIXON. The specific points in controversy relate to the city's failure to use its underground reservoir acquired by it under the 1906 act, and which we ask that the city be required to use, by one of our proposed amendments.

The CHAIRMAN. Let me get at the facts, if I can. Has all the water of Owens River been appropriated and used by the Los Angeles project?

Mr. DIXON. All the waters of the flowing streams have been used, other than has been used by the irrigators in their ditch systems.

The CHAIRMAN. Have they interfered in any way with the prior rights of the irrigators?

Mr. DIXON. In this way: They refuse us the privilege of storing this water, and whereas we applied not only for that reservoir, but other sites—it was not entirely the city; it was a misinterpretation, possibly, of the act—but all these reservoirs for which we had applied were withheld at the instance——

The CHAIRMAN. In the application made by the people there for these reservoirs you speak of, was there water in the Owens

River or any other source now used by the power company sufficient to fill these reservoirs in case your application was granted?

Mr. DIXON. I do not quite understand what you mean by the power company. You spoke of the power company.

The CHAIRMAN. I should say Los Angeles. Of course, that is what it is used for—for the Los Angeles power company. Getting down to the specific case, you made application for the Fish Slough as a reservoir?

Mr. DIXON. Yes, sir.

The CHAIRMAN. In order that that reservoir should be of any use whatever to the people at Bishop or that vicinity, water had to be placed in there, to be drawn as wanted, and that water could only be secured, I suppose, from the Owens River or its tributaries?

Mr. DIXON. Yes, sir; wholly from the Owens River or its tributaries.

The CHAIRMAN. Is there to-day, or was there at the time you made application for that reservoir, other appropriated water in the Owens River sufficient to fill that reservoir?

Mr. DIXON. Mr. Chairman, it relates to the diversion of the flood waters of Owens River from its upper sources——

The CHAIRMAN. Were those flood waters then appropriated by anyone?

Mr. DIXON. They were appropriated; yes.

The CHAIRMAN. By whom?

Mr. DIXON. By the irrigators of Owens River Valley.

The CHAIRMAN. That is what I want to get at. And how were they used?

Mr. DIXON. They were used in the midsummer to a very large extent in the irrigation of lands under the ditch system as it existed.

The CHAIRMAN. Are they to-day used?

Mr. DIXON. They are.

The CHAIRMAN. Where were you going to get the extra water, then, to fill this reservoir?

Mr. DIXON. We expected to use a portion of those same flood waters and such portions of the winter's flow as necessary. That was our original purpose.

The CHAIRMAN. Was the winter flow appropriated and used by the city of Los Angeles?

Mr. DIXON. Entirely so; yes, sir.

The CHAIRMAN. In order to get your water to put in this reservoir you would have to get water that is now used by Los Angeles City?

Mr. DIXON. Yes, sir.

Senator PHELAN. You stated that Mr. Rowan made filings in 1906.

Mr. DIXON. In the latter part of 1905 and the early spring of 1906. The application was filed and tendered to the Reclamation Service through Senator Newlands of Nevada.

Senator McNARY. Do you need the waters stored in Fish Slough for the purpose of supplying water to lands already under cultivation?

Mr. DIXON. We need them absolutely for the lands over which our present ditch system extends.

Senator McNary. Has the water been insufficient in the last two years for the irrigation of the land now under irrigation?

Mr. Dixon. It has been. The flow of the stream in the spring and fall, as it was last year and doubtless will be this year—the flow in the spring of the year, during seeding time, is low, and again in the fall, after the middle of August or the 1st of September. Last year the shutdown came in July, when ordinarily we have the greatest flood flows in July and August. Our stream was cut down from 30,000 or 40,000 inches to 7,000 or 8,000.

Senator McNary. What is the acre-feet capacity of Fish Slough?

Mr. Dixon. One hundred thousand acre-feet.

Senator McNary. What is the amount of land now that would be irrigated if you had this reservoir?

Mr. Dixon. It would approximate 50,000 or 55,000 acres, which is irrigated from this source.

Senator McNary. Would you have enough available land to take up all of the acre-feet capacity of this reservoir?

Mr. Dixon. We had abundant land to take all that storage.

Mr. Raker. You expected to use all the waters in this reservoir?

Mr. Dixon. Yes, sir.

Mr. Raker. Would it not be a matter of adjustment as to whose rights were involved in this matter—a matter to be adjusted under the laws of California?

Mr. Dixon. It would have been if the law of 1906 had not stepped in and the Reclamation Service had not come to us and said, "Gentlemen, we want to do thus and so; we will heartily cooperate with you." We believed the Reclamation Service was interested in the same project and the Government could build it and very greatly increase the development—more so than it is possible for us, they suggesting that it was more possible for them to do it than it was for us poor agricultural people to do it.

Mr. Raker. I understand before Los Angeles went in there to get part of this water, outside of the flood time, it was appropriated by these farmers for irrigation?

Mr. Dixon. Yes, sir.

Mr. Raker. Before Los Angeles made its filing and got the rights through the act of 1906 the farmers, through the method you have named and otherwise, had filed upon the flood waters?

Mr. Dixon. Yes, sir.

Mr. Raker. And then came along the United States Reclamation Service and withdrew practically all the land in that territory?

Mr. Dixon. Yes, sir.

Mr. Raker. And your applications and those of others were held up and not approved for reservoirs?

Mr. Dixon. Yes, sir.

Mr. Raker. Is that correct?

Mr. Dixon. That is correct.

Mr. Raker. Then Los Angeles came in and made its application under the act, and the Federal Government then withdrew or canceled its application for reservoirs. Is that about right?

Mr. Dixon. Yes. A year after the passage of the act.

Mr. Raker. Now, what the committee wants to know, I am satisfied, is whether or not the use of Fish Slough, which is excluded in

this bill, would deprive Los Angeles of any rights to water, whatever they may be, if this Fish Slough reservoir is constructed and used.

Mr. DIXON. You wish me to answer that?

Mr. RAKER. Yes; that is what the committee wants to know.

Mr. DIXON. Our interpretation of the bill of 1906 is that the city of Los Angeles would have an ample supply of water, and more than an ample supply of water, for its aqueduct if it utilized the grants that were made to it under that act, which was of a large, underground reservoir, aggregating with purchases, a very large area. They purchased not only from the National Government a large section of the public land simply because it was water bearing, termed an underground reservoir——

Senator CHAMBERLAIN. Let me ask you a question right here. If you were to get all you wanted now, would it deprive the Los Angeles people of any of the waters which now go through their aqueduct or would it reduce their power privileges in any way?

Mr. DIXON. It would not deprive them of one inch of water or one pound of horsepower under the plan we have suggested—what we have proposed in the amendatory clauses, and we do not wish to take anything from them.

Senator CHAMBERLAIN. Would it entail upon them any additional expense over and above what they have expended?

Mr. DIXON. It would entail upon them the expense of the moneys necessary to sink wells and pump the waters—it is mostly artesian—they would simply have to put on a little more air pressure. Under air pressure, they produce from two to three times the volume. This great area of underground reservoir is the bottom floor of Owens River valley. It has the subterranean waters of all the upper end of the valley underlying it.

The CHAIRMAN. Could the farmers sink artesian wells at any place in the valley and get the water?

Mr. DIXON. Not at the upper end.

The CHAIRMAN. The committee wants to know what you wish to do with this bill. Do you want to defeat the bill?

Mr. DIXON. No, sir.

The CHAIRMAN. Or if not, what amendments to the bill do you want?

Mr. RAKER. What slight amendments do you want to give you an opportunity to exist?

The CHAIRMAN. We do not want to spend a lot of time about the history of the thing that the legislation itself does not touch at all. Let us get right down to the reasons you are here, and the amendments to this bill that you want to offer and then give us the reasons why you think they ought to be adopted and then we will get down to business.

Mr. DIXON. We have prepared a recapitulation, which covers practically those points, although it is almost impossible to explain it without an interpretation.

We ask that the city be given a confirmatory grant to cover the aqueduct, covering the project from the aqueduct down. We are not opposed to that confirmation of their rights of way.

Then we request that the suggestion submitted to the House committee by the Interior Department, as to crossing of rights of way

or necessary common use of rights of way, be retained in the bill, with the addition of a saving clause covering crossing by roads of rights of way hereafter granted.

Then we have suggested that the city shall receive no grants of reservoir sites for power purposes which would interfere with irrigation, unless the city supplies secondary storage which will permit use of the water for irrigation after its use for power generation.

Mr. RAKER. The reason I asked these questions is that I was on the subcommittee of the House which took the matter under consideration, and Mr. Dixon and several other gentlemen appeared before the subcommittee, and Mr. Matthews and I understood it was practically agreed upon—that language had been practically agreed upon which covered what Los Angeles desired and what the irrigationists desired, and that under that language both could get what they wanted, with no interferences.

Now, if you are granted Fish Slough and no additional rights are granted to Los Angeles to construct reservoirs above the Fish Slough whereby the city could appropriate the water in advance of its going into Fish Slough there would be no controversy?

Mr. DIXON. It would ameliorate conditions very largely.

Mr. RAKER. If you are permitted to divert the flood waters above Fish Slough and then to use the Fish Slough water on down 40 miles of the river to the aqueduct, you people could go ahead with that under the California law and get the rights through Congress to use Fish Slough—if you could do that, you people would have no controversy; is that right?

Mr. DIXON. Substantially right; yes, sir.

Mr. RAKER. What you ask of the committee is that they do not leave the bill so that Los Angeles can go above Fish Slough and obtain rights for the purposes of canals and reservoirs and take them prior to your rights to fill your reservoir?

Mr. DIXON. Their storage of the flood waters of the river in the Long Valley Reservoir is absolutely essential to their using the gorge for power purposes. But conceding they go above us to store the waters and then equate them, that would mean at that particular period of the hot season, from June to September, that whereas we would ordinarily have thirty or more thousand inches of water for irrigation, by their equating this steam flow for power purposes we are cut down to 16,000 or 18,000 inches.

Mr. RAKER. May I ask if those suggested amendments, or, in other words, this suggested bill, as a substitute for H. R. 406, has been submitted to the representatives of Los Angeles?

Mr. MATHEWS. They have not.

Mr. DIXON. We have been preparing them in the last few days. We have suggested certain amendments by the Owens Valley Associated Ditches, and in connection with the bill as it had been prepared——

The CHAIRMAN. Let me ask you this question: We have been handed here what is termed "Suggested amendments to H. R. 406, Sixty-sixth Congress," reading "Strike out all after the enacting clause and insert the following." Is that suggested amendment agreeable to you?

Mr. DIXON. The suggested amendments—I do not think all of our amendments are attached.

Mr. RAKER. Senator Smoot has the substitute bill.

Mr. DIXON. The alternative amendment, connected with that, would fill our case, I believe.

Senator STERLING. Does the substitute bill cover everything?

Mr. DIXON. The substitute bill, with amendments, would cover all of that.

The CHAIRMAN. What I wanted to get at was this: I think that the representatives of Los Angeles city now ought to have a chance to look at your proposition complete, and if you have that complete, I would like to have you present it and seen if you people can not get together on it. The committee has no desire to interfere with the rights of people to water, either in Owens Valley or any other place, and I do not think we have any authority to do so. Nor do I think we have any authority to interfere with the water rights that have been obtained, if obtained, by the city of Los Angeles. It seems to me there ought to be some ground that you people could get together on. If there is no such ground, why, then, of course, we have got to pass judgment upon the legislation as it is presented here, and we shall ask you for suggested amendments, etc. But it seems to me that it would be far better and conserve time to see if you, with your proposition, could not reach an agreement now with the representatives of Los Angeles, and I am quite sure it will be easier to get the bill through if that agreement can be reached. Would it not be worth while to try that this afternoon?

Mr. H. S. BECKMAN. That is exactly the proposition I made to Mr. Mathews, and he did not care to consider it.

The CHAIRMAN. Then, of course, we must go on.

Mr. MATHEWS. I did not know until you came here that you had any proposed amendments. I really thought when I was making that suggestion about a conflict in the bill I was anticipating the only objection.

The CHAIRMAN. Now, if there is any spirit of compromise between the parties here, I think you ought to try to get together, and if you can not we will go on and we will have to try to pass on the questions of the legal rights of all concerned, and then the possibility of passing the legislation as presented or——

Mr. RAKER. Right in that connection, may I propound this question?

The CHAIRMAN. Yes.

Mr. RAKER. The section he refers to is section 8, which leaves to California the adjudication of waters entirely free, which was not in the substitute he has presented. If this bill is so worded that the irrigationists may have the right to Fish Slough prior to Los Angeles, and the right to build its canals and aqueducts and ditches and dams, so that if they own any water it will be diverted into Fish Slough—that is what you seek, before the committee, to leave to the courts of California the adjudication of the water rights, whatever they may be?

Mr. DIXON. In a large measure that is the situation, but it is not the entire situation.

Mr. RAKER. I mean with reference to Fish Slough?

Mr. DIXON. But it is like this: If we must go into the courts to adjudicate whether the city of Los Angeles is using a grant which the Government of the United States has given to the underground reservoir——

Mr. RAKER. If this bill provides, as we thought it did in the House, to give the irrigationists the prior right to use Fish Slough, together with the right to build canals and ditches to bring the water into Fish Slough, with an egress out of Fish Slough, prior to Los Angeles, that is all you desire, as far as the slough is concerned?

Mr. DIXON. Yes, sir.

The CHAIRMAN. You do not want this committee to pass on the question of whether you people own that water or whether Los Angeles city owns it? That is not what you want the committee to do?

Mr. DIXON. I have not studied that question from that standpoint, but——

Mr. RAKER. I avoided the grant proposition purposely so that that would not become involved. Now, you asked the committee, as I understand it, that Los Angeles carry out the provisions of the act of June 30, 1906, relative to the benefits they got by virtue of buying the 30,000 or 40,000 acres of land as a storage proposition?

The CHAIRMAN. We understand that. What I want to do is to eliminate everything here that does not directly affect the legislation that we have got to report favorably to the Senate or reject entirely, and it seems to me that you people ought to get together now and discover what the conflicts are, and if you can agree upon a bill, well and good. There is no disposition on the part of the committee to fail to pass the bill in order to carry this thing on to completion. There is no inclination on the part of the committee to rob the people of Owens Valley of the things they have.

Mr. DIXON. I thank you, Mr. Chairman, and that is the specific point I want to call your attention to, because under the act of 1906—this was unintentional, of course—but you did deprive us of the rights we had. I speak advisedly, because I am thoroughly acquainted with the situation as it existed then. We have been dispossessed, and we do not want to have those clauses reinserted, and this act interpreted in such way that we are to be again dispossessed, because the fact of the matter is that Mr. Mathews, in February of last year, said, "We are perfectly willing that the people shall go upon the upper locations and store those waters," and then they came in recently, through their officials, and said, "You can not store 1 inch of the waters of those streams."

The CHAIRMAN. I am quite sure that Congress never, in the act of June 30, 1906, intended in any way to take any right from any citizen of the State of California. I am quite sure of that, and I am quite sure now that Congress is not going to do that. The question of whether you have complied with the law and earned the right to the water is something that it is not for us to decide. The courts of California will decide that question if it has to be decided by law. But here we have a concrete project. A great city is involved. On the other hand, there is a conflicting interest here that affects the citizens of that State. Now, I would like very much to see if you people can not get together this afternoon on this proposition.

Mr. MATHEWS. I would like to make this suggestion: It occurs to me that there has been presented an amendment in the form of erasing the present act and substituting something else. It seems to me it would contribute a great deal to expedition and convenience in handling this matter to have these gentlemen submit their amendments to the bill which is before the committee, which would enable us to take them into consideration—that instead of taking up a new bill, which we have never seen, that they submit their proposed amendments to this bill. This bill has been well considered and the conclusions reached with the consent of opposing parties, and, in fact, we supposed that it was all agreed to, and to come in with an absolutely new bill, it seems to me, is very undersirable. I think that the gentlemen should submit to us their amendments.

The CHAIRMAN. I take it for granted that the substitute is simply in the way of an amendment. The body of it is probably in effect the body of the present bill. Are you willing to try this afternoon to reach an agreement?

Mr. DIXON. Yes.

The CHAIRMAN. Then, I think the committee had better stand adjourned, and I will call the committee together when you notify me that you have agreed or that it is impossible to agree. Then, I would like to ask you, Mr. Dixon, to take this position, that if you can not agree, you prepare your amendments to H. R. 406 and submit them to me, and we will be enabled to confine our discussion to those amendments.

Mr. JOHN R. DIXON. When will the two utilities be heard?

The CHAIRMAN. Perhaps it would be well for you to meet with these other gentlemen at that time.

Mr. JOHN R. DIXON. There is no possibility of reconciling the differences between Los Angeles and us.

The CHAIRMAN. Then, you can come before the committee with whatever amendments you desire to offer, but I would like to see Mr. Galen Dixon and the representatives of Los Angeles get together now, and let me know when you conclude your labors whether you have agreed or have not.

Mr. MATHEWS. We would like very much to have Judge Dixon submit his proposed amendments, so we may give them fair consideration.

Mr. JOHN R. DIXON. I am going to oppose the bill in its entirety, and I hope that I may be heard. I represent two public utilities serving a territory 400 miles long and 150 miles wide.

(Whereupon, at 11.55 o'clock a. m., the committee adjourned subject to the call of the chairman.)

WATER SUPPLY OF LOS ANGELES, CALIF.

TUESDAY, APRIL 20, 1920.

UNITED STATES SENATE,
COMMITTEE ON PUBLIC LANDS,
Washington, D. C.

The committee met pursuant to call at 10 o'clock a. m., in room 215, Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), Chamberlain, Phelan, Kendrick, Kellogg, and McNary.

Also present, same representatives of various interests as at last meeting.

The CHAIRMAN. The committee will come to order.

At the close of the hearings last Saturday a suggestion was made that the interested parties in this legislation get together and see if they could not come to some agreement as to the necessary amendments to the bill. Mr. Consaul, has there been any agreement reached?

STATEMENT OF MR. CHAS. F. CONSAUL, WASHINGTON, D. C., REPRESENTING THE IRRIGATORS.

Mr. CONSAUL. There has been an agreement reached as to several points between the irrigators, represented by Messrs. Dixon and Beckman, and the city officials, and I have some copies of what we have agreed upon, Mr. Chairman—that is, these are what we have agreed upon save as to one clause.

The CHAIRMAN. Will you file a copy of that agreement and let it go right into the record?

AGREED AMENDMENTS SUGGESTED BY OWENS VALLEY IRRIGATION INTERESTS.

I. Page 2, line 13, after the word "maintaining," insert "such"; and in line 15, after the words "Los Angeles," insert "as have been heretofore constructed."

II. Page 5, line 10, after the word "way," insert "including roads."

III. Page 6, line 21, after the word "city," insert "and the consideration and adjudication of such applications by the department having jurisdiction thereof shall be wholly upon the merits of such applications, unaffected by any possible conflict with the plans of said city."

IV. Page 7, line 9, after the word "act," insert "*And provided further*, That any approval of rights of way for reservoir purposes for the storage of water for use in whole or in part for the generation of electric power, under the provisions of this act, shall contain the express condition that such reservoirs shall not, without the consent of the parties having irrigation rights which would be affected by such storage, be used in such manner as will interfere with the use of such stored water for irrigation purposes, unless provision shall be made by said city for secondary storage for such irrigation use.

Mr. CONSAUL. There is one clause in this agreement, in our amendment 3, still in question.

The CHAIRMAN. Now, I would like to have some representative give to the committee whatever information he may desire upon this disputed point. We will leave the other four points entirely out.

Mr. CONSAUL. I think I can explain that in a very few words. The disputed point is in the third amendment in the slips just handed to the Senators, which it will be observed reads:

And in the consideration and adjudication of such applications by the department having jurisdiction thereof shall be wholly upon the merits of such applications, unaffected by any possible conflict with the lands of said city.

That deals, Mr. Chairman, with applications for rights of way which may be filed with the department prior to the filing of any conflicting applications by the city; and the idea is, on our part, speaking for the irrigation interests, that when such an application is filed prior to one filed by the city, the application shall be considered upon its own intrinsic merits, and shall not be affected by what may be termed a rule of decision which has been almost uniformly followed in the departments—of ruling adversely to any application against which the city filed a protest—by simply saying that this, if allowed, would conflict with the city's proposed plan of operation.

Mr. Mathews, representing the city, agrees with us as to the propriety of this amendment No. 3, down to the word "applications," where that word is used the second time, but objects to having inserted or incorporated in it the further phrase, "unaffected by any possible conflict with the plans of said city."

Knowing from past experience the general policy which has been followed by the departments and followed rigidly by the Forest Service of denying these prior applications to individual applicants simply by reason of the conflict with the proposed plan of the city, we wish Congress to make clear, if it will, at the present stage, what we believe to have been the intent of Congress when it passed the 1906 act. The old act of 1906 contained a specific provision to the effect that this act shall not affect the adjudication of any pending application. When we went before the department—and I speak especially now of the Forest Service—with an application which was filed a year before the city's act passed, we naturally thought that priority was to govern, in view of that plain provision of the statute. But it was very ingeniously argued by representatives of the city that the so-called protective provision in the 1906 act simply gave us a right to an adjudication, and the adjudication was invariably in favor of the later application by the city, regardless of the merit or demerit of that application filed by individual applicants. If that meant anything in the 1906 act it seemed to have no meaning as administered, and we wish to ask now that something be written into this act that will not leave it to the discretion of the department to invariably rule against an individual or corporate applicant whose application precedes that of the city. We are now agreed down to that word "applications," where it appears the second time in amendment 3. We want that adjudication, if we are prior in time, to be unaffected by any adverse rule or decision of the department.

The CHAIRMAN. I would like to hear from the representatives of the city.

Mr. MATHEWS. The word "applications" occurs twice in this proposed amendment. The language of the bill, as it now stands, is perfectly clear and explicit, in that the act could not affect the right of the parties to make application for homesteads, rights of way, for canals, etc., but if their applications are first filed, why, they are first in right. The purpose of this amendment, as interpreted by Mr. Consaul, is to tie the department up, in so far as it can be done, in its adjudication of possibly conflicting applications. We are perfectly willing, as stated by Mr. Consaul, to have it provided—although we think it is unnecessary—that when there is a prior application by a homesteader the consideration and adjudication of such application shall be wholly upon its merits; but we think to go on and put in what appears to us to be a reflection on the department—"unaffected by any possible conflict with the plans of said city"—is unnecessary and improper.

The CHAIRMAN. You think that the first three lines of the suggested amendment secure to every applicant his full right?

Mr. MATHEWS. Yes.

The CHAIRMAN. The city does not question——

Mr. MATHEWS. No.

The CHAIRMAN. Wherever there is a priority application you do not question the right of that prior applicant?

Mr. MATHEWS. No, sir; and the language of the bill is perfectly clear; but if they want to put those three lines in to make it even more clear, then there is no objection.

Mr. CONSAUL. Under the 1906 act the city did protest against every application which had been filed within the limit of these 40,000 square miles.

Senator CHAMBERLAIN. What construction did the department place on that?

Mr. CONSAUL. They upheld the contention that all that said prior applicant was entitled to was an adjudication, and they adjudicated in favor of the city.

Senator CHAMBERLAIN. Did they base it on the merits or on the city?

Mr. CONSAUL. On the mere fact that there was a municipal applicant, and that the greatest good to the greatest number should govern, notwithstanding the provision in the statute inserted at the instance of then Congressman Sylvester Smith, of California, that protected these prior applicants.

Senator CHAMBERLAIN. Did they simply say in terms, "Here is an act for the benefit of Los Angeles, and we will not consider these prior applications, as to date of the filing," or anything about the merits?

Mr. CONSAUL. That is precisely the position taken by the departments.

Senator PHELAN. Superior use?

Mr. CONSAUL. That the priority and all subsidiary questions must be relegated to the rear, in view of the protest of this municipality.

Senator CHAMBERLAIN. What do you say about that?

Mr. MATHEWS. The matter of an application for a power right of way under the act would render the permit revocable at the will of the department.

Senator CHAMBERLAIN. Take this kind of a case: Say there is an application that antedates the one in favor of Los Angeles at the headwaters of this stream and they come in and assert the prior application. Does the city of Los Angeles claim that by virtue of the statute of 1906 it overcomes that priority?

Mr. MATHEWS. No; we do not contend now and we did not then.

Senator CHAMBERLAIN. I understood that is practically what you did contend, and that the department held that the statute in favor of Los Angeles wiped out the priority.

Mr. MATHEWS. The case Mr. Consaul has in mind was an old application by two parties prior to our advent there, and we made the point that this was not a bona fide prior application for a genuine purpose, and urged in support of that certain affidavits.

Senator CHAMBERLAIN. That is a very different proposition—when you are insisting that it was not made in good faith. It makes an entirely different claim.

Mr. MATHEWS. We did not question the effect of the act, which preserved the right to prior applicants, or the right to an adjudication.

The CHAIRMAN. You do not question it now?

Mr. MATHEWS. No. The point is, as urged by the other side, that they were prevented from having an adjudication on the merits. We say put it in here if you want to.

The CHAIRMAN. Is there any other person that is interested at all in these five proposed amendments?

Mr. MATHEWS. I might say, Mr. Chairman, that there is a third interest—if Mr. Keener will permit me—an interest known as the Inyo-Kern irrigation district, which is interested in one of the proposed amendments which were considered as between the city and the clients represented by Mr. Consaul. And there happens to be, as I understand it, complete agreement all around as among the three interests on such proposed amendment. I do not believe you have noted it, Mr. Consaul, on this sheet.

Mr. CONSAUL. That being Mr. Keener's suggestion to you, I did not incorporate it in this list.

Senator CHAMBERLAIN. Suppose a settler up there comes in and in good faith asserts that his claim antedates the act of 1906, and you have no question about his good faith, and the question then is only as between him as a prior claimant and the act in favor of Los Angeles, would you contest his right?

Mr. MATHEWS. No, sir.

Senator CHAMBERLAIN. If there is no question about his priority?

Mr. MATHEWS. No, sir.

Senator CHAMBERLAIN. I just wanted to know for sure.

Mr. CONSAUL. If I may be permitted a moment, that decision to which Brother Mathews referred was not based on any invalidity or lack of good faith. It was based simply and purely on the fact that the city of Los Angeles wished to construct a power plant on Cottonwood Creek and thought it should have that right, regardless of the fact that these other applicants had been there applying for the same thing; and, in fact, their money had been taken by the Government for a Forest Service permit. But it was first suspended, and then revoked, simply because the city wanted something that some one else wanted.

Mr. MATHEWS. I might say that there was still another prior applicant, and his application was allowed, on the same stream. The application Mr. Consaul represented was disallowed. We urged that the application was not in good faith—for a genuine project; but there was another application, on the same stream, by a private individual that was allowed.

Mr. GALEN J. DIXON. I protest against this presentation—we irrigators are protesting against this manipulation of that act, setting us aside in a dozen different applications upon the public domain for irrigation purposes.

The CHAIRMAN. Let me ask you a question there, because I want to know just the situation that existed at the time the application was denied. Had these 15 applicants—or whatever number they may be—complied with the law in the use of water, or had they just made their application, and done nothing in the way of development?

Mr. GALEN J. DIXON. At the beginning of the operation they had made their application to the department in regular form, but during the course of the year, when the time intervening was very short and the men actually at work, the Reclamation Service came in and said "We will require this for our purposes," and then, having secured the consent of the parties in interest, some of whom were members of the association, these applicants were stopped in their work by the reclamation officials.

The CHARMAN. This is the same case that you referred to in your statement?

Mr. GALEN J. DIXON. It is one of the cases. There are several of them.

Mr. CONSAUL. I have here the Forest Service decision in the particular case referred to by Brother Mathews, which reads as follows:

> The Department of Agriculture has long maintained that when applications for the use of national forest land made by individuals or corporations for private gain interfere with applications made in behalf of the public through their regularly constituted agencies, the applications of the latter, without regard to technical priority, would be considered superior, on the principle of securing the greatest good to the greatest number. It may be true that the applications do not conflict as to the identical lands applied for, but questions of conflict are broader than mere land occupancy. It is evident in this case that both developments can not be made. If Grant & Anton's proposed plant should be constructed, a part of the city's proposed development would be entirely prevented and the remainder injured, while if the city's projects were completely developed, Grant & Anton's project would be useless. Under these circumstances and in conformity with the policy pursued by the department, the application of Grant & Anton is hereby rejected, and you may close the case and the records in your office.

And that was an application that was filed more than a year before the Los Angeles act was passed, and what I have read is the sole basis of the adverse decision.

The CHAIRMAN. Was that one of the cases, Mr. Mathews, that was proven that it was not filed in good faith?

Mr. MATHEWS. We attacked it on the ground that it was not in good faith for the purpose of carrying out the project.

Senator PHELAN. Are the decisions of the department in these matters final?

Mr. MATHEWS. I think that would be final, because it was dealing with a revocable permit.

The CHAIRMAN. At any time?

Mr. MATHEWS. A similar application by another applicant was sustained.

The CHAIRMAN. I would like to hear from Mr. Keener. Will you be as brief as possible, because we must get through to-day?

STATEMENT OF MR. JOHN W. KEENER, WASHINGTON, D. C.

Mr. KEENER. I represent the people of the Inyo-Kern, Mojave, and Freemont Valleys, who have an irrigation scheme. We propose to get water from Mono Basin, which is excepted by the express terms of this bill, and the lands they propose to irrigate are in part below the land that is requested by the city of Los Angeles—there, where Mr. Consaul is pointing—and down in there is where they propose to irrigate.

Now, we are principally interested in the right to run parallel with the city's work wherever it is necessary.

Senator CHAMBERLAIN. Within their right of way of 250 feet?

Mr. KEENER. If it is necessary to run parallel, for example, through a gorge, or something of that kind, and this bill provides for runing parallel for only a limited distance.

Now, I take it that the Interior Department would construe the term "limited distances" in accordance with the conditions existing on the ground, and that it would not object to—it may be 25 miles or a shorter distance.

The CHAIRMAN. I think that would be the construction that would be given by the department.

Mr. KEENER. Yes. Mr. Mathews made a suggestion the other day in regard to a change on page 4, line 19.

The CHAIRMAN. These are the words: "Pipes, pipe lines, canals, ditches, flumes, tunnels, or reservoirs, for the conveyance, delivery, or storage of water for irrigation." That is stricken out, so that it would read, "Hereafter enacted for irrigation, mining, or domestic purposes."

Mr. MATHEWS. It would be for the generation of electric power, in line 21 now.

Mr. KEENER. We have agreed to let that remain as it is. To strike out that will affect the people in whom I am intersted.

The CHAIRMAN. That is, you want the original language in the House bill to remain?

Mr. KEENER. To remain as it is, and Mr. Mathews agrees to that.

The CHAIRMAN. Have you any objection at all?

Mr. MATHEWS. No.

Mr. KEENER. So that fixes that. We agreed to let that remain.

The CHAIRMAN. Then we will reinstate the House language.

Mr. KEENER. There is one other point. On page 5, beginning at the bottom of page 4, line 25, there is a change between the House bill as it finally passed the House on March 2, 1920, and the original House bill.

The CHAIRMAN. That was an amendment made on the floor.

Mr. KEENER. On the floor. We want that restored to the language that was originally contained in the House bill.

The CHAIRMAN. For the record, just give us the amendment you desire.

Mr. KEENER. Beginning on line 25, page 4, after the word "heard," strike out "and upon notice by the city within ninety days of such possible conflict"; and after the word "city" in line 5 of page 5, insert "and for which application is filed by said city within ninety days of notice of the possibly conflicting application."

There are two or three others.

Senator CHAMBERLAIN. Does the city object to this?

Mr. MATHEWS. Our position is that we were content with the bill as reported to the House. We will be content with this proposed amendment, but we did not know who asked for that change, or why the bill was changed, and we wish to be careful that, in changing it back, we would not be in any difficulty with whoever instigated the change. But, if all interests are satisfied, we are satisfied.

The CHAIRMAN. Even if the Senate made the change it would be in conference.

Mr. MATHEWS. I would say that, in talking with Capt. Osborne this morning, it appears that that change came about through a misunderstanding of Mr. Finney of the Interior Department. That is the best information we can get.

Mr. OSBORNE. Mr. Finney, in a letter to Chairman Sinnott of the House Public Lands Committee, stated that the Sierras Power Co. criticized this on this ground and suggested the change, which was made supposing that it was the desire of the Sierras Power Co.

The CHAIRMAN. Now, is there any objection?

Mr. CONSAUL. Apropos of that, I will say that Judge Dixon and I represented that power company before the Interior Department and the suggestion we made was incorporated in the bill as it was reported to the House, so that the House floor amendment was due to a misunderstanding.

Mr. KEENER. On page 5, line 10, after the word "way" we inserted "including rights of way for roads." Mr. Consaul has also suggested that change, and Mr. Mathews has agreed to it.

The CHAIRMAN. What else?

Mr. KEENER. That is all, thank you.

Senator CHAMBERLAIN. Those changes are practically agreed upon?

Mr. KEENER. By all of us.

The CHAIRMAN. Before we leave this subject, I want to call the committee's attention, and particularly Mr. Mathews's attention, to a letter that I have received from Mr. K. K. Fritz, of Pomona, Calif.

Mr. KEENER. He is one of my clients.

The CHAIRMAN. I have just received it this morning, and as long as he has a representative here, of course, then, I will not read the letter; but you are sure that your amendments cover the desires of Mr. Fritz?

Mr. KEENER. There is one other amendment they have suggested, but we can not agree on that. This bill gives the city until December, 1922, within which to file their application, and five years after the act is passed to complete construction. Now, my people want that to provide that the city shall have their work under construction—begin construction—by December 1, 1922, and complete it within five years after the act is passed.

The CHAIRMAN. Now, Judge Dixon.

STATEMENT OF MR. JOHN R. DIXON, REPRESENTING THE SOUTHERN SIERRAS POWER CO.

Mr. DIXON. I represent the Southern Sierras Power Co. and the Nevada-California Power Co., public utilities, and I want to say, Mr. Chairman, at the outset that there is no disposition on the part of those companies to oppose the confirmation of any grant of the right of way for the Los Angeles Aqueduct as it is built from the intake to the city of Los Angeles and as it has been completed and in operation since 1913. But what we are here to object to is a grant to the city of national assets, millions of dollars' worth of public resources, for power purposes, for which these utilities and others are willing to pay the Government the charges which the Government imposes for permits; and we are here for the purpose of insisting that the Government retain its title for the people in perpetuity, as we think it should do, instead of granting these rights of way to this city.

Now, it is absolutely essential that the members of this committee should understand the status of these power companies before I proceed. These two companies are not private corporations in the obnoxious sense. The Nevada-California Power Co. is a public utility operating under the regulation of the Public Service Commission of Nevada. The Southern Sierras Power Co. is a public utility operating under the regulation and control of the Railroad Commission of California. The Southern Sierras Power Co. can not make rates for the people; the rates are fixed by the Railroad Commission of California. It can not sell a foot of its property without the consent of the Railroad Commission of California. These public utilities represent capital invested in excess of what the Los Angeles Aqueduct cost. They serve a territory 400 miles long, reaching from Aurora, Nev., on the north, to Calexico, on the Mexican border, on the south. The companies have in the territory sought to be tied up by this bill 195 miles of direct transmission lines and 100 miles of distribution lines. These companies supply 95 per cent of all the power used in the Imperial Valley. They serve the great industrial works of Oro Grande and Victorville, and they serve the mining regions of Nevada—which are more important than ever now, on account of silver—and they serve over 30 cities and towns, not so large as Los Angeles, but nevertheless municipalities, just the same, such as Riverside, San Bernardino, and others which could be enumerated.

Senator CHAMBERLAIN. They are operated for profit?

Mr. DIXON. Yes, sir; and the works of the city of Los Angeles will be likewise operated for profit, as was admitted the other day by Mr. Mathews.

Senator CHAMBERLAIN. I wanted to know——

Mr. DIXON. Certainly. We are not philanthropists; if we can get any profits, we certainly want a fair return; but we have not made much yet. Now, these public utilities are entitled to be heard when the power resources of the United States in their field of operations are in question, because, as a prominent member of your body told me two years ago, those resources should not be given away, but should be held in trust for all the people; and these companies are serving the people in three different States, as, in addition to what I have said, our lines extend to Arizona.

Senator CHAMBERLAIN. Is there any difference in the terms of the grant by the Government to your company than the grant by the Government to the Los Angeles people?

Mr. DIXON. Absolutely there is a very great difference, and I am glad you called my attention to it. Every power plant that these companies own, except one little one, is operated under a permit from the United States, on the strength of which permits about $30,000,000 have been invested; but we only hold them for 50 years, while the power rights proposed to be granted to the city would be perpetual and without charge. These companies pay the Government for their permits. And I say to you to-day that it will be a matter of national dishonor to strangle the extension and expansion of these public utilities after they have expended that money upon permits granted by authority of the Congress of the United States.

Senator CHAMBERLAIN. Just where does the grant of the Los Angeles bill and the proposed bill conflict with the rights of your utilities?

Mr. DIXON. I am going to point that out. One amendment suggested by the Southern Sierras Power Co. is that on page 3, in line 10, after the word "State," strike out the period and insert these words: "or to any lands which may be found to have been illegally purchased from the United States by said city, or to any lands the title to which was on the 31st day of October, 1919, or is now forfeitable to the United States by force of any act of Congress." It is designated as No. 2.

I was not previously in possession of the facts which I am about to disclose and therefore could not raise the question before the House committee, but inasmuch as this amendment is objected to, I will do so now, and you can draw your own conclusions.

Now, I will call your attention to this spot on the large map of California which we have hanging here. This spot on this map of California represents what is known as the Owens River Gorge, approximately 21 miles long, and what we are chiefly concerned in now is that portion of it which extends below the dam site of the Long Valley reservoir, which dam site is only about three-quarters of a mile from the upper or northerly end of the gorge. Situated to the north and northwest of that gorge is what is known as the Long Valley Reservoir site, one of the finest in the United States. When the city's dam is constructed 140 feet high, that reservoir will store 240,000 acre-feet of water and, owing to the conformation of the country, if a dam is constructed to the full height that the plan calls for, of 150 feet, that additional 10 feet in the height of the dam will so extend the flooded area as to permit 360,000 acre-feet of water to be stored in that reservoir, as the reservoir will then cover approximately 15 square miles.

I will show you another picture of this gorge. The little black spot which I have shown to you on the big plat showing township and section lines, is the gorge now under consideration, with the exception of that piece of land marked in blue. The dam is here [indicating section 19], as shown on the plats on file in the Interior Department. These are Interior Department maps. We are not interested in that reservoir site, the dam site of which is on the space marked blue; what we are interested in is marked in red on this plat and below the

dam site. That is a steep and narrow gorge, wholly unfitted for storage purposes and was never intended on the part of the city to be used for storage purposes. The fall of water in it is capable, according to our engineers, of developing perhaps 100,000 horsepower.

Now, we will see, gentlemen, what occurred, inasmuch as this amendment is objected to. What I am about to state now is predicated on certain records on file in the Interior Department. Copies are here, and I shall be obliged to ask your patience while I read them.

Senator CHAMBERLAIN. Who objects to your amendment?

Mr. DIXON. The city of Los Angeles. It objects to your incorporating it in the bill—and I may state that it is the purpose of these utilities, through the proper channels, to ask the Attorney General of the United States to institute proceedings to set aside the alleged title of the city (which I am going to explain to you) and to restore that property to the public domain, where it properly belongs, because as we contend the sale of that gorge was not within the contemplation of the act of Congress of 1906, and we will show this statement to be true.

Senator PHELAN. What is the name of that gorge?

Mr. DIXON. The Owens River gorge.

Here is a copy of a telegram from the land office files dated Los Angeles, Calif., October 20, 1906, and reading:

"City of Los Angeles protests against Mono Power Co. application"—I must explain that application to you. In 1906 a part of this section of land [designating section 16] was owned by the Mono Power Co. For decades before the Los Angeles Aqueduct was heard of the State of California owned that section of land, and in process of time it sold the east half of it to private parties. The person who purchased it is Mr. Edson Adams. Mr. Adams formed the Mono Power Co. and then applied to the Government of the United States for rights of way for transmission lines in order that he could take out the power to be generated on that half section of land. The protest of the city I am going to read to you was filed against Mr. Adams's application and is on file in Independence 0364, and reads as follows:

[Telegram.]

LOS ANGELES, CALIF., *October 20, 1906.*

R. WOODLAND GATES,
Munsey Building, Washington, D. C.:

City of Los Angeles protests against Mono Power Co. application, for the reason that the use of water of Owens River for power purposes at the point proposed by said company would materially impair the usefulness of the reservoir to be constructed by the city higher up the river, in Long Valley, site for which has been purchased, and which is to hold water from wet to dry years. In wet years water flowing in the river and tributaries lower down the valley is adequate for the city's supply, but in dry years the city will require all streams and also water stored from wet years. It is therefore essential that the city should impound the whole flow of the upper river in the Long Valley Reservoir during the wet periods. The power scheme on the river below the reservoir would necessitate the city permitting sufficient water to flow from the reservoir at all times to operate the power plant. This water during wet years and wet periods of ordinary years could not be used either for irrigation or domestic use, but would be absolutely lost. Such loss would render the city's supply inadequate. Power use would be wasteful, as compared with irrigation or domestic use. It is vitally essential that the city should stop the flow of the river and store the water in Long Valley for periods of drought.

Projects of the city and power company are necessarily inconsistent. Application of the company is addressed to the discretion of the department, and under the act can only be granted on the finding that the same is not incompatible with the public interest. The city project is public and should prevail over the private power scheme. See statement in President's letter to the Secretary of the Interior, June 25, that while if the city did not need the water it would be proper that the others should have it; yet, it is a hundred or thousandfold more important to the State and more valuable to the people as a whole, if used by the city than if used by the people of Owens Valley. Also, that opposition of the power companies offered one of the strongest arguments for passing the right-of-way bill, inasmuch as it ought not to be within the power of private individuals to control such a necessary of life as against the municipality itself.

OWEN MCALEER,
Mayor of Los Angeles.
WM. MULHOLLAND,
Superintendent of Waterworks.

The CHAIRMAN. Let me ask you, Judge Dixon, right at this point: Is that water absolutely necessary for the people of Los Angeles?

Mr. DIXON. The water?

The CHAIRMAN. Yes.

Mr. DIXON. In so far as we are concerned, we do not object to their getting the water for the aqueduct. That objection comes from the irrigators. We do not care how much water they store in their own reservoir or whether they store any. We are not concerned with that; we are only concerned with the gorge, and the natural flow therein.

Senator CHAMBERLAIN. Your contention is that this bill gives them the exclusive right to that gorge?

Mr. DIXON. Yes, sir; notwithstanding the gorge was purchased from the United States eight years ago in violation of the express letter as well as the spirit of the act of 1906, as I will show. That is our position, and that is why we want an amendment that this bill shall not cover any lands which were illegally purchased. Let the city stand on its purchase or fall if the purchase was made in bad faith.

Senator CHAMBERLAIN. If your contention prevails, what would prevent the city of Los Angeles from taking its aqueduct over the gorge?

Mr. DIXON. The aqueduct is 40 miles below this gorge. The water will run right down the river as it has run the past 8 years and the past 800 years.

Senator CHAMBERLAIN. I do not quite understand why you protest if that is true. I do not really see why, if that statement is true, if the rights of the city accrue below that point, why you are protesting against their acquisition illegally of land above there?

Mr. DIXON. I will tell you, Senator, it is this: This is the land on which it has been stated to this committee that the city is going to develop 35 per cent of its power. This is the land for which we and others want to apply to the United States for permits to use, but not to the exclusion of others. If the Government then gives the city a preferential right, well and good, but we want a fair opportunity to develop that gorge under the general laws and protest against the gift to the city of what it illegally purchased to defeat the operation of those laws.

Senator CHAMBERLAIN. And you claim they are claiming the exclusive right?

Mr. DIXON. I am saying that this bill——

Mr. CONSAUL. Suppose you read your amendment covering that point, showing what you ask to be excepted from the operation of the bill.

Mr. DIXON. Here is the amendment I suggested:

Or to any lands which may be found to have been illegally purchased from the United States by said city, or to any lands the title to which was on the 31st day of October, 1919, or is now forfeitable to the United States by force of any act of Congress.

Our object is this: If it turns out that the city's asserted title is illegal and void, as we claim it is, and this bill is passed, it will give them the right of way down there over these lands just the same.

Senator CHAMBERLAIN. If their title is illegally acquired, they can not deprive you by an act of Congress of the rights you have?

Mr. DIXON. But this bill will give the city an exclusive right of way, and that is why we are objecting. In other words, they are asking for an exclusive right of way over lands which they illegally purchased in violation of the act of 1906.

Senator CHAMBERLAIN. From whom?

Mr. DIXON. From the United States.

Senator CHAMBERLAIN. A suit could be instituted to set that aside.

Mr. DIXON. The suit would not set aside this act. If we go to the Attorney General of the United States and he institutes a suit to cancel the patent, our point is that, even if it is decided in favor of the United States it will cut no figure, because in the meantime you have by this act given the city a right of way over this same land. But I think if you will permit me to go through these papers from the Department of the Interior——

Senator CHAMBERLAIN. Mr. Mathews, what objection have you to that amendment?

Mr. MATHEWS. I am just learning the meaning and motive of it. I would like to state this: When the city applied for these lands in the gorge to which Judge Dixon has referred, its application for these lands was opposed by a power company. The contestants were heard. They were represented by attorneys and the power company was overruled. We paid for the lands at the regulation price of $1.25 an acre.

This is the very first time we have ever heard that we were not abiding by the decision of the department. This is the very first intimation we have had. We have been before Congress recently and they have never mentioned it before. Their position was overruled and the patent was issued on the order of the Secretary upon our paying the regulation price.

Senator PHELAN. What company is that, the Mono Co.?

Mr. MATHEWS. I think it was the Southern Sierras Power Co.

Mr. DIXON. It was not organized for four years after that decision was made.

Mr. MATHEWS. The Southern Sierras is an outgrowth of the Nevada-California Power Co. You represented the opposition, as I remember.

Mr. DIXON. I want to state to the committee that neither of these power companies entered any protest.

Senator CHAMBERLAIN. Did any others?

Mr. DIXON. Yes, sir; the Mono Power Co., perhaps.

Mr. CONSAUL. That was the Edson Adams Co.

Mr. MATHEWS. That is not involved here.

Senator PHELAN. I suppose the other company succeeded to the rights of that company?

Mr. DIXON. Yes; we did. We paid very recently $400,000 for it, and you are now asked by the city to cut out the words "or transmission" from the bill to keep us from getting out the power by a transmission line.

Senator PHELAN. Is that operated by your corporation now?

Mr. DIXON. Yes; we purchased the property of the Mono Power Co.

Senator CHAMBERLAIN. With knowledge that the city of Los Angeles had had a contest over the same land and had acquired title from the Government?

Mr. DIXON. No, sir; the city never had any contest, Senator, over the land we purchased.

Senator PHELAN. The city owns the right, I understand?

Mr. DIXON. No, sir; the city never had a dollar's worth of interest in that land, section 16.

Mr. MATHEWS. That is not involved here. That was patented to the parties by the State. It is not involved here and not questioned in any way; and the bill, for that reason, makes an express exception of development at that point from the scope and effect of the bill.

The CHAIRMAN. But the bill does provide that the Mono Power Co., or its successors, whoever own it to-day, shall not have the right of transmission lines, does it not, over the balance of the land you are contending for?

Mr. MATHEWS. On that point we pointed out at the time that to except from the bill the right of the company to file its applications for right of way for six months would suspend our rights thereunder for all purposes, for six months in all the territory involved, even from this point down to Los Angeles. But we have concluded to do this; that is, to suggest that this six months' period be cut down to a shorter period, because the six months' period was inserted in the bill a year or so ago and meanwhile, under the existing law, and the only law under which they could proceed, they have had the opportunity to file their map.

The CHAIRMAN. What effect would that have upon your company, Judge?

Mr. DIXON. I think not very materially. We are building a power plant there, and, I think, we ought to have a reasonable time to get into the department to get rights of way to get out. I can only say that six months would not be an excessive time. If this committee sees fit to reduce it——

The CHAIRMAN. The committee would like to reduce it to a shorter time that would do justice to all parties interested. I recognize the fact that the six months' period is too long a time to leave this thing open. It ought to be settled as quickly as possible.

Mr. MATHEWS. Let me suggest this: The Mono Co., which had no transmission, has sold out to the Southern Sierras Co., which has transmission. So the reasons which pertained to the Mono Co. do

not apply to the Southern Sierras Co. So, notwithstanding that, we would suggest that the period of 6 months be reduced to 60 days.

The CHAIRMAN. And in that case you would not object to the words "and transmission" remaining in the bill. Now, let us have this one thing settled now, without any further presentation of the case, if you are satisfied with that proposition. On page 25, line 6, leave these words "and transmission" in, and on page 7 of the bill strike out "six months" and insert "60 days."

Mr. DIXON. That is all right, so far as that feature of the bill is concerned.

The CHAIRMAN. I would like to have these collateral things settled as we come to them.

Mr. DIXON. May we have 90 days? That is one-half of the time.

The CHAIRMAN. Would that be satisfactory, Judge?

Mr. DIXON. Yes, sir.

The CHAIRMAN. So we have agreed on these two.

Mr. DIXON. Now, following the telegraphic message which I have just read comes the supplemental protest of the city of Los Angeles, only a part of which I will read.

(The paper referred to is here printed in full, as follows:)

City of Los Angeles, protestant, *v.* Mono Power Co., applicant. Supplementary protest of the city of Los Angeles:

The city of Los Angeles having heretofore submitted through its attorney, R. Woodland Gates, its telegraphic protest against the granting of the application of the Mono Power Co. for rights of way over public lands in the Independence land district, Calif., and said Mono Power Co. having filed an answer thereto, said city asks leave to file this, its supplementary protest and reply to the answer of said Mono Power Co., and submits the following statement, showing, first, the nature of the water project of the city of Los Angeles in the Owens River Valley, in the State of California; second, the present and probable future needs of the city; and, third, the nature and extent of the conflict of the Mono Power Co.'s application with the city's project.

* * * * * * *

Third. Nature and extent of the conflict of the Mono Power Co.'s application with the city's project.—There is substantially no contribution for the Owens River from any side stream below the Long Valley Reservoir and above the point where said Mono Power Co. proposes to erect its plant; therefore the establishment of the power scheme contemplated by said company would necessitate the city's permitting sufficient water to flow from said reservoir at all times to operate the power plant of said company, and thus the advantage and value of said reservoir as a means of storing water at flood times for use of domestic and irrigation purposes during period of drouth or scarcity of water would be in a large measure nullified. During wet years and wet periods of ordinary years the water thus allowed to pass down for the use of the power company would not be needed or used for domestic purposes or for irrigation for the reason that, as hereinabove shown, during wet years and wet periods of ordinary years the quantity of water discharged into the river from side streams and other sources below the point where said power company proposes to establish its plant is sufficient for all domestic needs and irrigation purposes, so that the flow of water from said reservoir during said wet years or wet periods for the purpose of enabling said company to operate its plant would be absolutely lost so far as the use thereof for any domestic or irrigation purpose is concerned.

The use of the waters of said river and its tributaries for domestic and irrigation purposes is paramount in importance to the use of the same for the generation of power, and therefore rights of way over public lands should not be granted which would have the effect of promoting a secondary and subordinate use to the prejudice of interests that are primary.

Furthermore, the city's project is public, for the benefit of its present population, now estimated to number 240,000 and which at present rate of growth will reach 400,000 in 1910. On the other hand, the scheme of the Mono Power Co. is purely private, designed for the pecuniary benefit of a few individuals.

That protestant presents herewith a map marked "Exhibit C," showing the Owens River Valley and the Long Valley Reservoir and proposed route of the conduit of said city.

Wherefore said protestant prays that the application of said Mono Power Co. for a permit for use of a right of way through public lands be not granted.

THE CITY OF LOS ANGELES,
By OWEN MCALEER, *Mayor.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Owen McAleer, being first duly sworn, deposes and says that he is the mayor of the city of Los Angeles; that he has read the foregoing protest and knows the contents thereof, and that the same is true, as he verily believes.

OWEN MCALEER.

Subscribed and sworn to before me this 7th day of November, 1906.

PERCY B. LLOYD,
Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

William Mulholland, being first duly sworn, deposes and says that he is the superintendent of the water department of the city of Los Angeles; that he has read the foregoing protest and knows the contents thereof, and that the same is true, as he verily believes.

WILLIAM MULHOLLAND.

Subscribed and sworn to before me this 7th day of November, 1906.

PERCY B. LLOYD,
Notary Public in and for the County of Los Angeles, State of California.

Filed November 12, 1906.

I have no doubt these gentleman believed what they said, because at that time the idea of developing power above the intake of the aqueduct by the city was never dreamed of by Congress or by the city, as I will show you in a moment.

Now, the object, gentlemen, of filing these protests is to show five things:

First. That the city not only knew that Congress, by the act of 1906, did not grant and never intended to grant any power rights above the intake of the aqueduct, but that the city's sole right was to acquire rights of way for storage above the intake to supply the aqueduct with water during low-water flow in Owens River.

Second. To show that the city had, within five months from the passage of the act of 1906, finally selected Long Valley for storage of the whole upper river.

Third. To show that the city never intended to use Owens River gorge below the dam site of the Long Valley Reservoir for storage, which dam site is less than a mile from the entrance, or northerly end of the gorge, as shown to you on the plat.

Fourth. To show that the city knew and always has known that the rights of way mentioned in section 4 of the act of June 30, 1906, referred to rights of way to carry down stored waters, if any should be necessary, to the aqueduct, and did not and do not refer to rights of way for power purposes, which last is the very thing the city is here seeking by this bill, and the identical use which it in 1906 protested should not be made of lands above the intake of the aqueduct.

Fifth. To show that the city did not purchase the Owens gorge, or channel lands, so called, for storage, but purchased them in violation of the express terms of the act of 1906 to prevent their use for

power purposes under the act of Congress authorizing power developments, with the ulterior design of coming to Congress, as it now has, to secure rights of way for power purposes over the same land it illegally purchased to defeat the operation of the general laws, and which land it previously claimed could not be used for power purposes without interfering with the city's supply of water.

Those protests I have read are the two documents on the points mentioned. I now want to read from the city's first annual aqueduct report of 1907.

(The paper referred to is here printed in full, as follows:)

On pages 35 and 37, mention is made of Long Valley Reservoir site, and it is said of this reservoir:

"The province of the Long Valley Reservoir site would be to hold over waters from years of excessive stream flow like 1906 for years of deficient stream flow such as 1898 or 1905. Its function, therefore, is purely annual, intended to meet unfavorable conditions during cycles of dry years."

This report is to emphasize the plain intent of the city never to use the Owens gorge for storage, but to use the Long Valley Reservoir for such purpose. This intent was never for a moment changed, and not a gallon of water has ever been stored in the Owens River gorge below Long Valley Dam since the passage of the act of 1906, the gorge being wholly unadapted to any such purpose.

I now refer again to the same first annual aqueduct report of the city.

The following excerpts from this official report are given for the purpose of showing that the project of the city for which it was given the grant under the act of June 30, 1906, did not include power generation save as an incident to construction work on the aqueduct, and as a future possibility along the actual line of the aqueduct.

The following is quoted from pages 56 and 58, under the heading "Power plants":

Particular reference is made to the portion of the report of the board of engineers relative to the development of water power. The most important site is in the San Francisquito Canyon, about 45 miles from the city of Los Angeles. A total drop of nearly 1,500 feet is available at this point. Another minor site for power development may be found a short distance below the end of the aqueduct, in the San Fernando Valley. Another opportunity for power development occurs near Little Lake, 150 miles northerly from Los Angeles, where a fall of 270 feet can be obtained. The average continuous output of power with a complete water supply from these plants is estimated by the board of engineers at 49,000 horsepower. The Fairmont Reservoir site at the intake of the main plant will permit of the water being liberated for this power as the demand occurs in the city. The water may be conserved for this purpose during legal holidays and nights, and liberated during working hours in such a way as to meet the demands. This the board estimates will permit the city to enter into contracts for a total output of 93,000 horsepower, measured at the point of delivery in hours of greatest demand.

The board finds that the conditions for the economic development and maintenance of power are very favorable, and its safety against interruption or diminution by drought and the permanent character of the aqueduct tend to make the power-development feature particularly attractive and valuable. Mr. E. F. Scattergood, an electrical engineer of extended experience in the construction of hydroelectric power plants in southern California, has made a detailed estimate of the cost of installing the power plants, and his report is attached as Appendix J:

"The proposed plan is to build the aqueduct for the purpose of supplying water for municipal purposes, and after its completion, if the citizens of Los Angeles consider it desirable to install these power plants, they may subse-

quently be built as independent works. The installation of power has not been included in the aqueduct estimates, because the power situation is considered as wholly independent of the proposition of supplying water and should stand on its own merits."

This report I read to emphasize the fact that even a year after the passage of the act it had not been decided to build any power plants, even along the line of the aqueduct, and any above the intake had never been thought of either by Congress or the city.

By section 1 of the act of 1906 the Congress of the United States, vested with the absolute power to make disposition of the public land, made the express, direct, and absolute grant to the city of Los Angeles for a right of way 250 feet wide through the counties of Inyo, Kern, and Los Angeles for the purpose of constructing pipe lines, ditches, and other works that can be summed up in the word "aqueduct"; and also granted the city such lands as the Secretary of the Interior should find to be necessary for power plants and diversion dams on the side and along the aqueduct. That is what Congress granted to the city of Los Angeles, absolutely, directly, not through the mediation of any department. All the Secretary had power to do was to examine the plats of the city and see whether they conflicted with any homestead or other valid interests, and also to see—he had one discretionary power—that the city did not take more land along the aqueduct than was necessary for power purposes. And the city got that grant practically free of charge, merely upon paying $14,000 on account of certain surveys that the Government had made on the proposed Owens River reclamation project and upon the filing of certain plats.

Now, gentlemen, I will refer to another section in that bill. The intake is down here [indicating], practically 40 miles below this Owens Gorge. Owing to the general nature of torrential streams in California, the city apprehended, as it might well—and Congress perceived it—that in low-water periods there would not be enough water in this 40 miles of river to supply 400 feet flow in that aqueduct. The city not only got the grant mentioned in the three counties, but there was also, partly in Mono County, this particular land [indicating] embraced in the reclamation project; and Congress said for these purposes—and it is in the bill—for the "purposes of storage and necessary rights of way," to take the stored water down to the aqueduct, if the engineering features so require, the city should have a preference right to purchase any lands previously withdrawn for that reclamation project upon the payment of $1.25 per acre for such purposes; and further said to the city, "If you do not use them for such purpose"—that is in the act—"the land you purchase and do not use for storage shall revert to the United States, because Congress only gives to you the right to purchase on that condition."

We charge that the city never purchased these lands—the Owens Gorge—for the purpose of storage or for rights of way for taking water down to the aqueduct.

Now, in the light of the Mono Power Co.'s trying to develop power on its own land there [indicating], purchased from the State of California, it is manifest the city made the purchase of the gorge lands to frustrate and obstruct the operation of the general laws

of the United States. I want to call your attention particularly to the distinction between sections 4 and 1 of the 1906 act. The Secretary of the Interior had some discretion under section 1. He could determine whether they were taking too much land or not for power purposes along the aqueduct. But when the city went to the Interior Department and said: "We want to purchase that land for storage purposes"; that is to say, the Owens Gorge or channel lands, the Secretary had no discretion in the world. He was bound to permit the city to purchase. The only supervision he had was to see whether homesteaders or other entrymen had any of these lands. And when he found no other entries covering the lands he must approve the city's plat. I say to you, Senators, he had no discretion—neither he nor the President of the United States could stop the sale of that land to that city, provided it was acting in good faith and wanted to purchase that land in fact for storage purposes. But the point is, the city did not purchase it for that purpose, and the records show you that it was not purchased for that purpose. And I state to you, Senators, to-day that it is not our purpose to get the land ourselves, which we are willing to take under permit; it is our purpose, unless the committee and the Senate shall indorse the city's conduct, to lay the matter before the Attorney General of the United States and see whether or not the United States owns that Owens Gorge or whether the city of Los Angeles owns it.

I have nothing further to add on this subject, except merely to repeat this: We ask that this bill shall not apply to any land "which may be found to have been fraudulently purchased from the United States by said city, or to any lands the title to which was on the 31st day of October, 1919, or is now forfeitable to the United States by force of any act of Congress."

And in concluding that subject, let me add that if the city's title is good, it will not be hurt by this amendment; if it has not any lands that are forfeitable, it will not be hurt. Why is it, then, that they object if their title is good and the lands are not forfeitable?

Now, another amendment which we propose—that was amendment No. 2 I discussed first. Our amendment No. 1 is: that on page 2, in line 18, after the word "energy" insert "for use or consumption in said city and contiguous territory not more than 10 miles beyond the corporate limits."

And I might say here—having opened this other question—I shall ask for a few minutes to reply.

Now, you have been led to believe here—I do not mean wrongfully, because I have the highest respect for Mr. Mathews and like him very much, indeed—but, as I understood him, you have been led to believe—I was at least—that the object of this city, so far as the development of power is concerned, is to supply the city and also to sell power to manufacturers and others engaged in business in the city to which, of course, there can be no reasonable objection. The idea conveyed was that the use is to be limited to the city, and Mr. Mathews was particular to explain to you why they had two little construction plants up North selling power to some communities. The point I want to make as to amendment No. 1 is this:

In the great case of the United States versus the State of South Carolina (199 U. S.), which seems a far cry at first, as it arose under

what was known as the dispensary act of South Carolina, the officers and agents of the State were required by internal-revenue officers to apply for licenses, and they did. In two or three years the money collected from the State for these licenses amounted to a very large sum, and the State of South Carolina filed a claim in the Court of Claims, alleging that the United States could not tax the State of South Carolina, which, as a general proposition, is absolutely sound. The Court of Claims, however, in effect held that the State of South Carolina was not acting in its sovereign capacity in carrying on the liquor business, and that if it wanted to engage in a business ordinarily conducted by private individuals it was subject to Federal license taxes. The case was taken to the Supreme Court of the United States and that court affirmed the decision, and it was in that decision that Mr. Justice Brewer, one of the ablest men who ever sat upon that bench, after discussing the facts of that particular case, took up the question of public utilities and the growing tendencies of governmental agencies to compete with private enterprise. He said in that great opinion:

> Certain it is that if the possibility of a government usurping the ordinary business of individuals, driving them out of the market and maintaining place and power by means of what would have been called in the heated invective of the time "a legion of mercenaries" had been in the public mind, the Constitution would not have been adopted or an inhibition of such power would have been placed among Madison's amendments.

The question now is on the amendment I am presenting to you. Are you going to give to the city of Los Angeles a legal subdivision of the State, these vast power rights, because they are very considerable, as the city is asking for an option over an immense territory? Are you going to give them to the city to compete beyond the city limits with a private enterprise that is paying a charge to the Government for doing the same thing—that has invested millions of dollars—and thus enable the city to destroy, to undersell that private enterprise, to say nothing of the proposition that it is not a municipal function to go beyond the corporate limits and sell to other towns and communities?

Now, is it possible to conceive that the great legislative branch of our Government, which authorized the giving of permits to these utilities under which charges are exacted and under which have been expended vast sums of money, is now going to turn around and give free of charge to a municipality 240 miles away the remaining power resources in the territory where the utilities are operating? If you are, do it with your eyes open. If you are to give the city a grant to develop power for the use of itself and its inhabitants, that is one thing; but if you are to give it a grant whereby it can monopolize the power business in Southern California, that is another thing.

Senator PHELAN. You quoted Justice Brewer?

Mr. DIXON. Yes, sir.

Senator PHELAN. Was it not Justice Brewer who decided that Congress, under the Constitution, could not levy an income tax? That shows the bent of his mind.

Mr. DIXON. He was a great jurist; but the case I referred to was a case of whether or not the United States could tax a State—and in the exercise of governmental functions of course it could not. But

the proposition presented was that of a State entering into private business, exercising a quasi-private function, and as such being taxable as any citizen.

Mr. CONSAUL. Here is what the Supreme Court of the United States said in the very recent case of City of Los Angeles *v.* Los Angeles Gas & Electric Corporation, decided in December, 1919.

Mr. DIXON. I read from that recent decision as follows:

> The court reasoned and concluded that what the city did was done not in its governmental capacity—an exertion of the police power—but in its "proprietary or quasi-private capacity," and that therefore the city was subordinate in right to the corporation, the latter being an earlier and lawful occupant of the field. The difference in the capacity is recognized and the difference in attendant powers pointed out in decisions of this court.

Mr. MATHEWS. I would like to explain the circumstances of that case, in which I was the attorney. It has nothing to do with this controversy at all.

Mr. DIXON. I would like to show to you gentlemen a map showing the field of operations of the public utility companies I represent—these vicious, terrible power companies. This brown line represents the territory we are serving. In area it is 56,000 square miles as contrasted with this little green area down here, which extends to Santa Barbara and which embraces 5,600 square miles. This green area is the terrritory which the greatest power company in southern California supplies; that is, the Southern California Edison. The Southern California Edison has remaining undeveloped and tributary to the city of Los Angeles 770,500 horsepower. The city of Los Angeles, in addition, has undeveloped along the aqueduct 140,000 horsepower, whereas, exclusive of Owens River Gorge, and including the lands covered by this bill, there is in the entire territory served by the Southern Sierras and the Nevada-California power companies only 91,000 undeveloped horsepower, or about nine-fourteenths of the undeveloped power along the city's aqueduct. According to Mr. W. L. Huber there is along the aqueduct of the city of Los Angeles undeveloped to-day 140,500 horsepower. These figures, gentlemen, were prepared by Mr. W. L. Huber, an engineer, of San Francisco, Calif., whose reputation, I think, can be stated to you by Mr. Elston, and I may say that they are confirmed by the city's reports in many respects.

Senator PHELAN. Los Angeles purchased the Edison Co. and therefore succeeds to this potential power?

Mr. DIXON. No, sir; it purchased its distributing lines.

Senator PHELAN. In the city only?

Mr. DIXON. Yes; but the point is, the city is the market for the Southern California Edison. That company in its last report claims 900,000 undeveloped horsepower. According to our figures it has 770,500 undeveloped, and the city has 140,000 undeveloped, making a total of more than 900,000 horsepower undeveloped available for use at Los Angeles and its environs.

In answer to an inquiry of the Senate in 1915, the Secretary of Agriculture, by his report, informed you that the average horsepower installed throughout the country was one-third horsepower per capita. So that on such an average there is enough power there for 8,000,000 people. According to the same report, applying the ratio of one-third horsepower to California, there is enough power undeveloped tributary to Los Angeles from these two sources alone for an additional population of 3,000,000 people.

Senator PHELAN. How soon will you have 3,000,000 people?

Mr. MATHEWS. We have nearly 600,000, according to the census of 1920, and had 300,000, according to the census of 1910. On that basis it will take many years.

Mr. DIXON. We hope to live long enough to see that result.

Mr. MATHEWS. The census report that I have gives it at 577,906.

Mr. MULHOLLAND. At the time this commenced we had less than 200,000.

Mr. DIXON. The aggregate population of that territory served by the utilities asking these amendments, including the mining camps of Nevada, is nearly two-thirds of the population of Los Angeles; and I want to ask you Senators to bear that in mind, that we are really developing a new country. The population of the Imperial Valley has increased 300 per cent in the last 10 years; and the territory which we serve contains, amongst other things, the largest potash deposits in the world outside of Alsace-Lorraine, and the development of that great area is of infinitely more importance to the national economy than the consideration of one city's demands. The importance to the Nation of the territory we serve is infinitely greater than Los Angeles can be, and yet there is only 90,000 horsepower undeveloped outside of that gorge in the whole territory served by these companies. The question is, with the knowledge before you that the city has more than 140,000 horsepower undeveloped along its aqueduct, and taking in connection with that the Edison Co.'s 800,000 more, I put it to you, Are you going to give the resources here asked for in this bill to the city or are you going to leave them open to development under the general power act so that the utilities I represent may have a fair chance for expansion?

Senator PHELAN. What is the potential development of the gorge by the Hydro Corporation?

Mr. DIXON. On the company's half section, 13,000 horsepower.

Senator PHELAN. That is your whole amount?

Mr. DIXON. Yes; on that tract in the gorge.

Senator PHELAN. That is all you claim?

Mr. DIXON. No, sir; we can develop 13,000 on the private land, but with permits much more could be developed.

Senator PHELAN. Why was it not taken up by these people who were in the valley earlier?

Mr. DIXON. Mr. Adams could not. He took up all that he could purchase from the State. As a matter of fact I was not then acquainted with Mr. Adams, but I assume that when he purchased this from the State of California and applied for transmission rights of way under the act of 1901 he got all that he could handle at that time.

Senator PHELAN. How did the State of California get possession of that?

Mr. DIXON. Under the school grant; it is section 16.

My remarks have been rather disjointed and all that I can ask now is that I be given a few minutes to answer any explanation that is made as to the purchase of Owens Gorge.

The CHAIRMAN. I am compelled to open the Senate this morning, and I will have to leave in about five minutes.

Mr. MATHEWS. Just on that point. The city bought the lands at $1.25 an acre on the Secretary of the Interior's construction of the

act, and this is the first intimation I have had that there is anything wrong with our title. But assuming there is something wrong, and that there are grounds for such an action, we paid for that land, and can there be any reason why that land should be excluded from the scope of this bill even if it turned out that the title the Government gave was of no validity? I think that is an additional reason why the bill should be left as it is, so as not to exclude those lands for which the Government has our money. I still state that the city's application for these lands was contested. I have a distinct recollection of that. I want to ask this question: The original power company was the Nevada-California Power Co. operating on Bishop Creek?

Mr. DIXON. Yes, sir.

Mr. MATHEWS. Afterwards the Southern Sierras Power Co. was organized by the same people?

Mr. DIXON. Not until after you had made all your selections.

Mr. MATHEWS. Afterwards, I say. Now, was Mr. Charles Potter an attorney for the Nevada-California Power Co.?

Mr. DIXON. He was.

Mr. MATHEWS. And he still is?

Mr. DIXON. You know he is.

Mr. MATHEWS. Of course, this came up so unexpectedly——

Mr. DIXON. He may have appeared and protested on behalf of the Mono Company, but we had no connection with the Mono Co.

Mr. MATHEWS. Nevertheless, we had a contest, and after that contest we got the land and paid for it, and have had a patent for six or eight years.

Senator PHELAN. Is not the patent a finality?

Mr. DIXON. Not if illegally or fraudulently obtained, and the Government has six years from discovery of the fraud to attack the patent. I am now informing this branch of the fraud.

Senator PHELAN. It can be disputed in the court, however?

Mr. MATHEWS. There is a limitation on it.

Senator PHELAN. When you got a power, do you ever get an additional patent?

Mr. DIXON. The city got a patent conformable in terms to the act itself, but has never for one moment in all these years used the gorge for storage and never intended to.

The CHAIRMAN. Which was for the development of power purposes.

Mr. DIXON. Not ostensibly for power purposes, but supposedly for storing water, which was all that section 4 of act of 1906 authorized land to be purchased for.

The CHAIRMAN. Oh, yes; for water purposes.

Mr. MATHEWS. Another thing: One of the proposed amendments limits us in the distribution of our power. We are required under our charter to devote our power primarily to our people. If there is any surplus, we are permitted to dispose of it to others—to municipalities or communities outside the city—but if we wish to dispose of it to a power company for resale we have got to get the consent of the people. There were two or three plants, as I have stated before, which we built in Owens Valley, about 250 miles from Los Angeles. We converted those into public-service plants and are supplying the local people with power at their request.

Now, as to the territory which the Southern Sierras Power Co. serves, it is an entirely independent territory from ours. We do not expect or intend to invade that territory at all. We are entirely independent in our purposes and operations. I would ask, Mr. Chairman, that we be allowed further time, in order to cover this more fully.

The CHAIRMAN. If that statement is to be made, I would prefer to adjourn this meeting until 10 o'clock to-morrow morning, with the understanding that you may have a further time of 30 minutes.

Mr. DIXON. May I have 15 minutes on the question of the purchase of the Gorge land in reply to Mr. Mathews?

The CHAIRMAN. If it will not take more than 15 minutes.

Mr. MATHEWS. The irrigators, it will be remembered, have one amendment to discuss.

The CHAIRMAN. The committee will stand adjourned until to-morrow at 10 o'clock a. m.

(Whereupon, at 11.45 a. m., the committee adjourned to meet at 10 o'clock a. m. on Wednesday, April 21, 1920.)

WATER SUPPLY OF LOS ANGELES, CALIF.

WEDNESDAY, APRIL 21, 1920.

UNITED STATES SENATE,
COMMITTEE ON PUBLIC LANDS.

The committee met pursuant to adjournment at 10 o'clock a. m., in room 215, Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), Chamberlain, and Phelan.

Also present: Same representatives of various interests as at last meeting.

The CHAIRMAN. The committee will come to order. Judge Dixon, you were to occupy 15 minutes this morning.

Mr. JOHN R. DIXON. Not more than that, I promise.

The CHAIRMAN. If you will continue now.

Mr. JOHN R. DIXON. I was going to suggest to you, Mr. Chairman, that if Mr. Mathews has concluded any explanation he wants to make as to the purchase of the land, I would be glad to go on, but if he has any further explanaton to make I would like to have 15 minutes after he has finished.

Mr. MATHEWS. I would suggest that, in view of the fact that the irrigators have a proposed amendment which has not been discussed, they be allowed to present that now, and then I will make a brief reply.

The CHAIRMAN. Who is here to represent them?

Mr. JOHN R. DIXON. I am ready to go on.

The CHAIRMAN. No; let us have the irrigators now and you will be given an opportunity to answer later on.

Mr. CONSAUL. Mr. Galen J. Dixon will take up this other proposed amendment on which the city and we differ entirely, Senator.

Mr. RAKER. Before Mr. Dixon proceeds, I would suggest that he put in the record at this point the statement he started to make the other day—he has it in writing—and then we will discuss this particular amendment.

The CHAIRMAN. That will be satisfactory.

Mr. RAKER. You will be able to insert here the statement you had the other day but did not deliver.

(The statement referred to is here printed in full, as follows:)

PREPARED STATEMENT OF GALEN J. DIXON, WITH EXHIBITS.

By us people of Owens Valley, who have undergone the experience of pioneer settlers in the semi-arid regions lacking in transportation and in the hundred and one factors which to most minds seem to make life worth living, the enactment of this pending bill is regarded as almost fatal to the further development of the irrigation possibilities of our section.

That the use of water for domestic purposes is the highest form of beneficial use may be admitted, and we irrigators have no quarrel with Los Angeles over its desire to provide water for city use.

However, in the present era, when the constant urgings by those in authority, and by students of economics are for increased production of foodstuffs in this country, the use of water for irrigation, in the production of foodstuffs, assuredly must rank next in importance to the use of water for domestic purposes.

Accepting at its face value the assurances of the city attorney, Mr. Mathews, made before the House Committee in this Congress and also in the Sixty-fifth Congress, that this bill is not designed to secure for the city any further supply of water, we may start with the premise that the city is not asking this legislation in order to get any more water for domestic purposes. That being so, we can properly set aside any theory that the city's proposed use of the water resources of Owens Valley is such as to be preferred to any other use of water.

As we irrigators view the matter, therefore, it simply means that on the one hand, we have our present irrigation systems, largely the growth of necessities confronting us, and by no means perfect either in general plan or as to scope. As our lands have been brought under ditch from time to time, the necessity for increasing our water supply and for applying all obtainable water to the highest degree of irrigation efficiency, has become plain.

While the Owens Valley associated ditches need water for irrigation, and must from time to time ask rights of way for their reservoirs and canals, our only concern, as far as pertains to our own use of these rights of way, is the securing and use of water for irrigation.

On the other hand, as far as concerns the pending bill, after securing a new or amended grant to cover the Los Angeles aqueduct and works as now actually erected on the ground, the only object of the city as stated by its representatives, is to secure rights of way for power purposes.

There is no controversy between us Owens Valley irrigators and the city as to the grant covering the aqueduct and the works already erected.

The points which I wish to bring before the committee are that the passage of this bill will place us irrigators at the mercy of a great, undefined, commercial power project, proposed by the city, whose object would be the development of the maximum of such electric power, regardless of the results to irrigation, and which evidently contemplates the increasing use of these waters for power purposes, even though wholly lost for irrigation.

On the other hand, we are seeking a common ground where the city will be enabled to get what its representatives say they require, without at the same time strangling our community and every other interest in the community.

We have a growing, prosperous community—a community even yet with a great future, possessing rich soil, delightful climate, and vast mineral resources—a community whose tax values amount to about $15,000,000. The values of its mineral resources will probably make it equal to any other mineral-bearing section of the country, as we have an almost infinite variety of minerals which are now being rapidly commercially developed.

I have said advisedly that this bill places us irrigators at the mercy of that power project, and I will prove it by the language of the bill.

Section 2: I first call your attention to the language of section 2, beginning on page 4, line 14.

The part of the section following this point provides that the head of the department may grant easements or permits for pipe lines, canals, reservoirs, etc., for conveyance, delivery, or storage of water for irrigation and other purposes, on condition that he shall first give the city a chance to be heard, and then shall find that such easement or permit may be granted without material interference with the proposed works of the city.

I am not a lawyer myself; but we have asked for legal advice, and are assured that this prohibits the head of the department from giving us any irrigation right of way, over the objection of the city, in the event the right of way that we ask would interfere with the proposed power works to be constructed by the city.

We had supposed up to this time that if anyone was to be given a preference it would be men that needed rights of way in order to irrigate agricultural land, in order to raise more grain, cattle, or fruits for the people to eat.

Owing to the way this bill is drawn, however, our irrigation rights are to be made not only second in place to the power rights of way that the city may conclude it wants, but if there is found any "material interference" between one of our irrigation rights of way and the city's power rights of way, then the

Secretary of the Interior or the Secretary of Agriculture is not given even a discretionary power to approve ours instead of approving the city's application. Under this bill the Secretary is bound to give preference to the city for power purposes.

Section 3: I now refer to that part of section 3, on page 6, beginning with the proviso on line 14.

This proviso merely gives us irrigators the right to make filings for rights of way on the land covered by the bill, provided we file before the city does.

Taking sections 2 and 3 together, there is very serious doubt, as we are assured, whether the Secretary would feel like approving even our prior filing for irrigation under this section unless he was convinced that we would not interfere with the city's project for developing more power.

Mr. Chairman and members of the committee, if you will heed merely the statements of gentlemen representing the city of Los Angeles, with regard to the pure and almost altruistic motives of the city in this matter, you might be almost convinced that it would be well to turn over the entire public domain of California to this city for administration as a public trustee.

Unfortunately, however, some of us Owens Valleys settlers and irrigators have had to live with this city for the past 14 years, and we know from experience about how much consideration we can expect from the city, once it has the power of oppression. The mere fact that Los Angeles is a municipality does not change the fact that it is a corporation, and when vested with great powers, and with the privilege of using those powers over 200 miles from home, it does exactly what private corporations sometimes do. It uses that power to its own advantage and does not care a cent whether our section is ruined or not.

I make the statement with deliberation and absolute sincerity when I say that this much-exploited Los Angeles aqueduct system has been made a mere incident to one of the most skillfully managed land speculations of a generation on the coast. This has been rather intimated in hearings before the House committee on this bill and on the similar bill in the last Congress, and I think it is time that you were informed somewhat on this point.

Los Angeles says it does not want any more water. It already has so much that it has taken a great volume of water from our section and has conducted it to San Fernando Valley, near Los Angeles, and has there put it to irrigation. A large area of land is there irrigated. That land was bought up by speculators just prior to the inception of the aqueduct project. Those interested in this large land purchase gave their great influence to the securing of a grant from Congress, ostensibly for the benefit of the public of Los Angeles.

This may have been one case where the public of the city did get some benefit, but that was an incident, a side issue.

The city got so much more water than it had any municipal use for that it put it to use for irrigation of these cheap lands of the San Fernando Valley that had been purchased a short time before. I have reason to believe that those lands were bought along about 1905 for an average of not more than $40 an acre, and as soon as they were under ditch they were sold at prices ranging from $250 to $2,500 an acre. We could all afford to be philanthropists at that same rate of return. These speculators cast their money on the water and it was returned to them manyfold.

I am further credibly informed that water is being carried down to the city in such amount to enable it to develop electric power that the water is being run out through the city sewers during four to five months of the winter.

I mention some of these things in urging you not to be too credulous in listening to the plaintive wails of the city for a chance to grab still additional public domain.

Many of us have been in Owens Valley for years and years. I have been there nearly 30 years. We went there in spite of the fact that there were places which offered greater advantages in all that goes to make life enjoyable. We were willing to go where others did not care to go, and to practically make our ranches out of arid land. In the earlier days, not far back, we lacked almost everything that people had in old communities. But we managed to get along in some fashion. Every year more land was brought under ditch. Every year we were able to send out more grain, hay, and cattle to feed the people of other communities.

In the earlier days I have worked myself day after day and week after week on these irrigation ditches, working with our hands, and worked side by side with men that were barefoot because they did not have money to buy shoes.

While they had no money, they had faith—faith in the future of our section; faith in the good will of the Government.

A few years back we had a very great disappointment at the hands of the Government, too.

The Reclamation Service sent its engineers into Owens Valley to survey for a great irrigation project. Speaking from my own personal knowledge, we were induced and virtually forced to give up our filings on several reservoir sites in order not to hamper this great public reclamation project, and on the assurance that the Government would itself build what reservoirs and other works were necessary, and then give us all a chance to come in and buy the right to use water from them.

You can imagine our feelings when, without any notice to us at all, Congress wrote into the first Los Angeles act of 1906 a provision turning that whole project over to Los Angeles in event the city would pay the Government the cost of the surveys already made. The city did pay the Government some $14,000 and took over all the data compiled by the Government engineers with our help in part.

Speaking of my own knowledge, Engineers J. C. Clausen and R. S. Hawley, of the Reclamation Service (then Geological Survey), asked me to yield reservoir filings for the benefit of the Government project. They told us that if the Government built the reservoirs we would get our water from them; but that if the reservoirs were not built the Government would restore all our rights and would even turn over to us the plats and field notes of the Government engineers. They stopped actual construction work of a reservoir on Big Pine Creek, in which I was personally interested, with the same sort of assurances and promises.

Not one of those promises was fulfilled by the Government. On the contrary, as I have told you, the whole matter was placed in the hands of Los Angeles.

We were thus left without our filings that we had given up in order that the Government might have a free hand, and that same act of 1906 tied up absolutely every right of way in that part of California.

While I am not here to ascribe wicked motives to anyone, I ask attention to the fact that the 1906 act gave the city the right to purchase at $1.25 an acre any land that had been withdrawn for the Owens River Reclamation Project, if the Government adandoned the project.

It has for many years been the firm belief of the people of our valley that the Government machinery was used in a way that was at least grossly unfair, in order to place a great area in the hands of the city. Please remember that the first act for the city was approved June 30, 1906. It certainly had been contemplated for some time before it was passed.

Officials of the Reclamation Service then in authority, certainly collaborated with the city officials in drafting the bill that was passed, as the city people knew just how much had been spent by the Reclamation Service in the preliminary surveys. Hence, I say, the Reclamation Service must have at least contemplated the abandonment of the project in favor of the city as early as 1905. Well, in view of the privilege granted the city to purchase withdrawn lands, does the fact that many thousands of acres were withdrawn in 1905, for this reclamation project, suggest any motive behind that withdrawal?

Do the further facts give rise to any thought in your minds, that Mr. J. B. Lippincott was the engineer that recommended what land should be withdrawn, ostensibly for this reclamation project, and that he entered the employment of the city of Los Angeles as soon as the act of 1906 was approved?

With relation to this Mr. Lippincott, I wish to say further that in April, May, June, September, and November, 1905, and in January, 1906, the engineering firm of Lippincott & Parker, of which J. B. Lippincott was a member, received from the city of Los Angeles a total of $4,511.93, for engineering work done, and at least a part was for work done on the Long Valley Reservoir.

The official records of the Geological Survey and Reclamation Service will show that this man Lippincott was appointed to a position in the Geological Survey January 2, 1903; that when the Reclamation Service was organized as a separate bureau, he was appointed in that bureau; that his resignation was accepted to take effect July 31, 1906. From January, 1903 till July 31, 1906, he was in the Government service. His firm was receiving pay from Los Angeles during that period.

The month following approval of the Los Angeles act of 1906, he resigned from the Reclamation Service, and entered—this time openly—the service of the city.

Do these record facts suggest any reason why Lippincott recommended withdrawal of large areas ostensibly for reclamation projects but really for the city?

While we valley people may not be very suspicious, and while we are country people, some of us were not born yesterday, at least, and it has been the firm belief, generally held in our valley, that officials of the Government connected with this great reclamation project, while acting officially and supposedly for the benefit of our valley and its great possibilities, were conniving with officials of Los Angeles; that official action was taken by the Government having but a single object in mind, and that was to benefit the city at the expense of the irrigators.

Now, however, the city has again come before Congress, and we are here this time, to ask you not to let the city benefit further at our cost, but to make it take what the general laws would give it, after confirming its right of way to cover its aqueduct works as already built.

The attached exhibits with the accompanying explanatory data are inserted at the suggestion of the committee to expedite matters for the purpose of showing how the present bill would render it impossible for the valley people to depend solely upon the Long Valley storage.

They also show specifically how the water rights, accompanying the reservoir applications, were forfeited instead of being protected by section 3 of the act of June 30, 1906, and how the present bill would further dispossess these people of nine-tenths of all the possible storage.

At the time when the agents of the Reclamation Service came into Owens Valley (May and June, 1903), the citizens had made water appropriations, under the State laws, for storage purposes, had surveyed and properly applied for eight reservoir sites, and were at work upon a portion of these and the men in the field surveying three other sites, when they were stopped on the ground by J. C. Clauson and R. S. Hawley, acting under the direction and under an authorization from the Reclamation Service (then Geological Survey), with headquarters in Los Angeles. These reservoirs were as follows:

Rock Creek Lakes, two reservoirs, water right 6,000 inches.

Convict Lake, one reservoir, water right 10,000 inches.

North Fork Bishop Creek, three reservoirs, water right 5,000 inches.

Big Pine Lakes, two reservoirs, water right 5,000 inches.

All of these reservoirs were capable of two fillings each season, it being intended to use the winter flow for supplying the shortage at spring seeding time, and the summer flood flow for fall shortage, doubling the storage capacity and reducing the expense.

The water rights were then unquestioned and there were no adverse claimants. These rights would to-day be worth not less than $1,000,000, and would have doubled the irrigated area and enabled the citizens to have perfected their water rights instead of being dispossessed in the manner herein shown.

If section 3 of the act of 1906 did not protect these invaluable rights, there is no clause in the present bill which gives us any protection whatever.

All reservoir applications filed by the irrigators in Owens Valley were held in abeyance by the Interior Department because of the pendency of the Government's Owens Valley Reclamation Project, from 1903, and meanwhile the Government failed to perfect its own water appropriations for that project. Then, before the Government formally abandoned this reclamation project (although all Government work on it was abandoned in January, 1906, six months before the enactment of the city's bill of June 30, 1906), along came the act of June 30, 1906, which passed over to the city the exclusive right to secure reservoir sites within this great area.

Obviously, water rights of the irrigators could not be made available without rights of way, and the Government had given the exclusive right of way privilege to the city, after taking over our sites and then forfeiting its own water filings. That absolutely operated to deprive the irrigators of their prior reservoir filings, and also made it impossible for them to divert and store the water claimed by them under their water appropriations.

The city thus had the exclusive right of way for reservoirs which was then extended backward, ex post facto, to include the water appropriation made by Frederick Eaton in October, 1905 (long after the other water filings of irrigators had been made, and eight months prior to its enabling grant), and the city made that Eaton water right available by securing the only available means of diverting and storing that water, during the time that the hands of the irrigators were tied by the special act of Congress.

Meanwhile, the Reclamation Service was withdrawing more lands for the supposed Government project, withdrawals being made for that alleged purpose as late as January, 1906. The Government engineer in charge of the Owens Valley Project was J. B. Lippincott. He was the official who would make recommendations for withdrawals for the project.

As late as December, 1905, Congressman Sylvester C. Smith was assured by the Reclamation Service that there was no present intention of abandoning this Owens Valley project, although it now develops that at that very time the project was being held up for the benefit of the city, as evidenced by their own published statements contained in the first aqueduct report and the court records which showed that the Chief of the Reclamation Service had so advised the city in an official communication which should be available for the purposes of this committee.

We append an extract from the letter from Congressman Smith to G. J. Dixon, dated December 8, 1905, showing the assurances then being made to him by the Reclamation Service.

HOUSE OF REPRESENTATIVES,
Washington, December 8, 1905.

The ASSOCIATED DITCHES, G. J. DIXON,
Secretary, Bishop, Calif.

GENTLEMEN: I have received by due course of mail your letter of November 25 with reference to the Owens Valley-Los Angeles matter. Complying with your request I have visited the office of the Reclamation Service and also of the Secretary of the Interior for the purpose of ascertaining what is being done and what the future plans of the Government in this matter are. * * *

At both offices I was assured that the Government has no present intention of surrendering its claims on the Owens River, but still has in mind the further investigation of that irrigation project. * * *

Very truly, yours,

S. C. SMITH.

In short, while it may be said that Congress could not legislate so as to deprive citizens of water rights held or claimed under State laws, Congress did by indirection accomplish that very result.

As we have shown, the citizens were denied reservoir rights because of the pendency of the Government's Owens Valley reclamation project, and then instead of allowing the irrigators to benefit from the abandonment of that Government project or permitting reinstatement as was the departmental usage elsewhere, the city's act of 1906 granted exclusive rights of way for several years to the city, thereby passing those rights to the city over the heads of the irrigators.

We also charge the city with an exhibition of want of good faith, in that it has been repeatedly said by representatives of the city in recent hearings that the city does not desire to secure any more water, while at this very time negotiations are in progress between the city and the Reclamation Service, looking to the acquisition by the city of vast water supplies from the Mono Basin, lying to the north of the area covered by the pending bill.

As showing this, we refer to a letter dated March 20, 1920, from the Director of the Reclamation Service to Messrs. Consaul and Heltman, which frankly states what is contemplated and says that—

"City officials suggested some months ago that the city needed more water, * * *."

In connection with all these facts it must be remembered that the so-called protection of prior rights in the 1906 act was found to be no protection at all in most cases because all priorities were ignored, especially by the Forest Service, in favor of the city, to which all rights were given whether others were prior in time or not. As is shown in the attached exhibit relating to the storage on the North Fork of Bishop Creek, not only was the decision based upon the fact of the water being required for the reclamation purposes but all of the land designed to be applied for by these people, and many thousands of acres of other lands, were wholly withdrawn from entry, thus making it impossible to perfect the water appropriations under the State law.

Attention is also directed to the wording of the act of June 30, 1906, to show that there was no intention to withdraw lands from entry, but that if they were entered they would be subject to the right of way proviso only in case they were needed by the city.

IRRIGATION WATER CAN NOT BE STORED BY CITY IN LONG VALLEY RESERVOIR FOR COMMON USE BY CITY FOR POWER AND FOR OWENS VALLEY IRRIGATORS.

There are two seasons of the year when water must be stored for irrigation—i. e., during the winter, when no water is used for irrigation, and during the summer floods, when more water comes down the river than can be used for irrigation.

As to the winter flow, that would not be stored at all in Long Valley Reservoir by the city because that much flow (about 12,000 inches) would have to be permitted to run from the reservoir in order to generate the constant power supply. That winter flow is caught by the city in the lower Haiwee Reservoir; and as the city has filed on that flow and has actually stored it under the water rights which it perfected while our hands were tied by the act of 1906, that winter flow can be eliminated from our present consideration.

As to the flood water of the summer, that will be stored by the city, save as to the comparatively small equated flow used by the city for power generation. Unless the city does store that summer flood water it will have no reserve supply with which to maintain a constant source of power. It is that summer flood water or its equivalent that we ask Congress to require the city to allow to flow down past its Long Valley Reservoir, with right to the irrigators to impound it in our Fish Slough Reservoir to the extent of its capacity, and that such action be made a condition to the granting to the city of the new privileges which it asks in this bill. While the city is asking for something at the hands of the Government is the time to require the city to deal fairly by those whose rights have been wrested from them by prior congressional enactment.

If the city did not intend to use the Long Valley Reservoir for power purposes, it might be feasible to have common storage in that reservoir for both the city and the irrigators. Stated differently, if the city intended to use Long Valley Reservoir for the only purposes that it assigned when it asked for the grant of that reservoir site, the common storage there might be feasible; but it is now admitted by the city that the reservoir that the officials said was wanted to store water for supplying to the city, is not in fact intended for that purpose at all. Whether that reservoir grant was secured by the city by fraudulent misrepresentations we do not assume to assert. The fact remains, however, that the city got that reservoir ostensibly as a place for storage of water for its municipal-water supply, yet does not design to use it for any such purpose.

The city secured the easement, under the terms of the act of June 30, 1906, covering the Long Valley Reservoir site. As part of its application therefor, it filed in the land office at Independence, a plat showing the location of the reservoir site, and forming a part of that plat is a certificate, executed by the mayor, city clerk, president of board of public works, and by the Secretary of that board, stating the purposes for which the site was desired, and that certificate contains, among other statements, the following explicit statement:

"And we further certify that the reservoir site herein described is desired for use in connection with the construction, operation, and maintenance of canals, ditches, pipes, and pipe lines, flumes, tunnels, and conduits for conveying water to the city of Los Angeles."

It was on the representations so made that the Long Valley Reservoir application was approved by the Secretary of the Interior on August 22, 1911.

Yet it now develops that instead of desiring that reservoir for the purposes stated, the city really is to use it for generation of power, and not for any of the purposes set forth above.

The proposed and now admitted plan of using the Long Valley Reservoir for power, with the necessity for a uniform and equated flow during the entire year, instead of the asserted plan to use it merely for storage of water for domestic use, creates an altogether new situation, so far as the irrigation interests are involved, and it is what is causing the present trouble, in large measure.

The city practically promised the Government when it secured its Long Valley Reservoir easement, that it would use the reservoir "in connection with conveying water to the city."

Now, it makes it plain that it has no such intent. That being so, then all we ask is that the grant secured under promise to use it for one purpose, shall not be used for a wholly different, commercial purpose, unless our rights are reasonably protected, and now is the time to give us that protection, if ever. We can not expect the city to make terms with us after it shall have secured all the new rights that it is now asking.

Apparently, with the recent passage of this bill by the other House of Congress, the representatives or employees of the city began to feel certain that this bill was to shortly become a law. In one instance they knocked out the gate of a dam on one of our creeks, and they have told us irrigators that they do not intend that we shall reservoir any more water in Owens Valley for irrigation purposes. In the last Congress the bill was amended to except Fish Slough Reservoir from its operation. That was done at our instance, as we had an application pending for a grant of that reservoir site. We got the grant last fall. Now city employees tell us that they will see that we don't use it.

At a public meeting at Bishop, held within the past 30 days, which Mr. Beckman and I attended, Mr. Mulholland told us irrigators of the valley that it is impossible to permit storage of water in this Fish Slough Reservoir without interference with the aqueduct. He made that statement in the presence of Mr. Mathews and Mr. Scattergood, who are here.

It may be suggested that this is a matter of water rights to be decided by the State water commission.

However, if you will now write into this bill a provision compelling the city to use the water of the large acreage of underground reservoir that the Government sold the city, it will be made apparent to the State water commission that the city already has more water than it can possibly use for any legitimate purpose. That will prevent the city from securing allowance of water rights above us in such manner as to render useless our Fish Slough Reservoir, for which the Government gave us an easement last year.

We call your attention to the fact that thousands of acres of land in our valley were sold by the Government to the city in order to give the city an immense underground water storage. That land has such a great underground water supply that artesian wells can be drilled almost anywhere in it, but the city has scarcely tapped that source of supply until this last fall, but now proposes to curtail our irrigation supply.

We also call attention to the fact that this land was sold by the Government to the city as "actually necessary for storage or right-of-way purposes," and on condition that title should revert to the Government "in the event of the abandonment thereof for the purposes aforesaid."

Well, if the city is not using these lands for these purposes, why should not its grant of those lands be forfeited? There will be plenty of people willing to take up those lands under the desert-land law, and who will irrigate them from artesian wells. Why keep a large acreage locked up from use?

Had the Government gone on with the Owens River reclamation project, it might have developed an area of 500,000 acres of as fine farming land as can be found. Instead, we have only about one-tenth that area now under ditch, and all the benefit that results from this loss to Owens Valley has gone to Los Angeles and vicinity, not omitting mention of those rich men who have grown still richer by the San Fernando Valley speculation.

Right here I wish to call your attention to the fact that the use of the water of upper Owens Valley for irrigation would not interfere at all with the water supply of the city. This statement may sound rather surprising at first, but it is absolutely correct.

Water used in the upper valley for irrigation loses something by evaporation, of course; but the statistics of the Government show that in this vicinity the loss from evaporation as an incident to irrigation use is only about one-third as much as the loss from evaporation from reservoirs.

Aside from what is lost by evaporation, the water that is used for irrigation necessarily seeps through the upper soil and ultimately finds its way into the water-bearing gravel strata of the valley, and thence makes its way to Owens River or into the drainage basin tapped by the river. As is well known, and as has been established by the city in securing its right to purchase a large area of valley lands as an underground storage reservoir, this valley is underlaid by a gravel bed which is practically an inexhaustible reservoir.

As the intake of the city's aqueduct is many miles below, the supply that would reach the intake would not be lessened by irrigation use above.

Not content with having secured legislation of a special sort for its exclusive benefit, the city now wishes to despoil our valley still further. Not satisfied with having gotten possession of most of our water resources, it now seeks to get the most of what is left. It will get it if Congress gives it the rights of way that will prevent our getting any. If we irrigators can't get to water, of course, we can't utilize any water rights.

Which do you deem as of the greater importance, that the city shall be given the right to prevent further development of the irrigation of Owens Valley, and as an incident take water down to irrigate lands used for growing oranges and lemons and grapefruit near the coast, and let part of the water go to waste, or to let us irrigate our farming lands? And in asking this question I call your attention to the richness of our lands, once water is supplied.

Our land is as rich as that of Imperial Valley. Of course, we are in the Temperate Zone, while Imperial Valley is almost tropical. We have raised 50 to 60 bushels of wheat to the acre; good crops of corn; potatoes from 250 to 300 sacks of 100 pounds each; from 15 to 20 tons of ensilage to the acre; and from 500 to 1,000 boxes of apples. Gentlemen, we have a great country if given half a chance to develop.

A great mistake was made when the Government abandoned the Owens River reclamation project in the interest of Los Angeles, but that mistake can't be rectified now. That has been done. But there is no use of now voluntarily and knowingly extending the scope of that mistake.

The effect of passing this bill that the city wants would be to sentence this great Owens Valley to perpetual desert existence, save as to the comparatively limited extent already developed, and we fear—fear very much, in the light of past experience—the effects of this legislation even on our present irrigated area.

We know something of rights under general laws; we work under them ourselves; but we fear these laws that are made to order to meet the demands of this great corporation called Los Angeles.

I have mentioned that we know from experience about how much consideration we people of Owens Valley can expect from Los Angeles. It is a case of the lion and the lamb, and we are always inside.

The general sentiment in favor of giving the city a water supply brought the legislation of 1906, that gave the city not only a water supply, but also armed it with a roaming commission, a sort of letter of marque, to gobble up all the reservoir sites and rights of way for power purposes. It is impossible to read the 1906 act or the statements of members of the public land committees at the recent hearings without reaching the conclusion that Congress regarded the power rights carried by that act as merely incidental or subsidiary to the carrying of the water to the city and along the line of the constructed aqueduct.

That same general sentiment has been constantly shown by the Interior and Agricultural Departments, more especially the Forest Service, which has uniformly favored the city in every instance, regardless of priorities. If the city wanted a reservoir site for power purposes, and we wanted it for irrigation, the city got it. If a private individual wanted a reservoir site for power and so did the city, the city got it.

In the 1906 act a provision was incorporated, at the instance of our then Congressman, Hon. Sylvester C. Smith, who stated to us that said clause was introduced for the protection of our interests. He was a lawyer himself, and he died confident that he had secured some protection for us when there was included in that act the provision in section 3 reading as follows:

"That this act shall not apply to any lands embraced in rights of way heretofore approved under any act of Congress, nor affect the adjudication of any pending applications for rights of way by the owner or owners of existing water rights; and that no private right, title, interest, or claim of any person, persons, or corporation, in or to any of the lands traversed by or embraced in said rights of way shall be interfered with or abridged, except with the consent of the owner or owners or claimant or claimants thereof, or by due process of law, and just compensation paid to such owner or claimant."

Yet the departments have held that this provision of the law merely means that a prior applicant was entitled to an adjudication, in the light of the adverse claim of the city, and every such case has been decided, I believe, in favor of the city, even though the other application might have been filed years before the city's act was passed.

The people of Owens Valley feel very deeply on this matter. We feel that this great city has come into the valley which we have called our valley, because our homes are there; because we have made it the fairly prosperous community that it now is, and has retarded our development, and that the city is now seeking to further throttle us.

Of course, we people up in Owens Valley may not amount to very much when our interests are opposed to a city of 600,000 people. We are just farmers. We don't control very many votes; we have not the means to conduct any campaign of publicity. We have very few privileges, except those of working hard to support ourselves and to make food for others.

We have not come before Congress asking that we be given any special rights or privileges, either. While we have thought at times that some laws of Congress were not drawn so as to fit our case at all, we have tried to get along with laws as we found them. We have put up with considerable of what city people would call hardships; and we have been willing to have only the same rights and the same privileges that the rest of the people of the United States had, doing the best we could under conditions as we found them, and yet having enough confidence in our section to be willing to change conditions which nature had made, and we did change those conditions and we did it by the hardest kind of hard work, too.

When we think of all that we have done and of the results that we have accomplished; when we think of the way that Congress left us in the lurch with regard to the Owens Valley reclamation project, and handed that project over to a city situated over 200 miles away from us, after inducing us to relinquish or abandon rights that we previously had, and left us entirely at the mercy of that distant city, that has no concern or interest in our welfare; when we consider and ponder on all these things, do you, Senators, think it any cause for surprise that we feel that Los Angeles has had enough of special law for its benefit, and that the time has come when we people of this valley should be given some consideration?

It occurs to me that we may be asked if we were not satisfied with changes made or promised when this bill was before the committee of the House in the Sixty-fifth Congress; and if we were satisfied then, why we are complaining now.

Well, in the first place, when we left the hearings in the last Congress, we still felt doubtful as to how we were to be affected by the bill. The House committee did agree to except Fish Slough Reservoir from the effect of the bill. That helped us some, because without that exception we would be prevented from constructing and using that reservoir, which is now under way. We secured a grant from the Interior Department on that reservoir.

Since I was here with Mr. Watterson, over a year ago, we have found out more about what the city is apparently planning to do to us, and for that reason we asked the privilege of coming before you to protest.

Neither Mr. Watterson nor I was used to appearing before committees or to examining bills for the purpose of determining precisely what they might possibly mean. Perhaps if we had had the help of some one that was accustomed to that sort of work we might not have been satisfied at that time. We did feel very apprehensive, but we were unable to point out exactly where the bill might hurt us.

SUGGESTION.

Feeling as we do about this matter, our request or suggestion is that the bill be amended in some particulars. Let it give the city a new grant of rights of way to cover what the city says it needs, i. e., a grant covering its aqueduct and other works that it has built off of the rights of way that were approved; let the rights of all be protected with regard to matter of crossings of rights of way, as provided in the House bill; and then let some provisions be written in that will require the city to use for the purposes contemplated the great area of underground reservoirs which it purchased from the Government for $1.25 an acre under the 1906 act. Also, let provision be made for joint making of measurements of the streams and other water supply, so that some check can be kept on the city and its manipulation of the water supply of our valley.

We have prepared and submit to the committee a draft of a proposed substitute for the bill as passed by the House, and which we believe gives to the city all that it has any right to ask, and which will make the new or present grant conditioned on the city's doing what it should do.

RECAPITULATION.

The irrigation interests of Owens Valley therefore protest against the enactment of this bill in its present form because it affords no real protection to them, but on the contrary again leaves practically all the resources of the large area in the hands of the city.

As the bill now stands it makes altogether new grants of rights to the city, in addition to confirming the right of way covering the actually constructed aqueduct. Now that the city is before Congress asking new grants, this is plainly the time for Congress to lay conditions on the city which will compel the city to use rights previously granted in the manner intended by Congress.

1. In the substitute bill which we submit we suggest the confirmatory grant to cover the aqueduct. That is the only part of the pending legislation that really has to do with the prior grant of 1906.

2. Then we request that the suggestion submitted to the House committee by the Interior Department as to crossing of rights of way or necessary common use of rights of way be retained in the bill, with the addition of a saving clause covering crossing by roads of rights of way hereafter granted.

3. Then we have suggested that the city shall receive no grants of reservoir sites for power purposes which would interfere with irrigation, unless the city supplies secondary storage which will permit use of the water for irrigation after its use for power generation.

4. We have also suggested that the city take the new grants under this act under condition that it shall put to use as a source of water supply for the city the lands applied for under all its applications as an underground water storage, and which it bought from the Government for that express purpose. Those lands were sold to the city under condition that they should revert to the Government in event the city should abandon their use for that purpose. As a fact, the city, except to a very limited extent, never has so used these lands, and now is the time to legislate so that they must be first used before the city acquires any new rights.

As a part of this same proviso we ask that stream measurements and measurements of artesian and other flows be made, half the expense to be borne by the city.

5. Knowing what we may expect from the city, we ask that Congress require the city to expressly accept the conditions which we ask to have laid upon the grants proposed to be made.

As we propose nothing unfair to the city, if the city declines to accept these conditions, then it must be because it intends to proceed counter to these conditions. If so, then the city intends to proceed unfairly under this proposed legislation.

You will realize that full reinstatement in our former rights and full restitution are impossible, and we are only asking such measures of protection as will enable us to insure a water supply for our Fish Slough Reservoir.

SUGGESTED AMENDMENT TO HOUSE BILL 406, SIXTY-SIXTH CONGRESS.

Strike out all after the enacting clause, and insert the following:

That there is hereby granted to the city of Los Angeles, California, a municipal corporation of the State of California, all necessary rights of way, not to exceed 250 feet in width, over and through the public lands of the United States in the counties of Inyo, Kern, and Los Angeles, State of California, and over and through the Inyo and Santa Barbara National Forests, and that portion of the Angeles National Forest lying west of range 6 west, San Bernardino meridian, as established by the United States public land survey, and over and through that portion of the Sequoia National Forest east of the crest of the Sierra Nevada Mountains, in said State, for the purpose of covering and including such canals, ditches, pipes, pipe lines, flumes, tunnels, and conduits for conveying water to the city of Los Angeles, and such power and electric plants, poles, and lines for the generation and distribution of electric energy as have been heretofore constructed and for which rights of way were approved by the Secretary of the Interior under the provisions of the act of Congress approved June 30, 1906, entitled, "An act authorizing and directing the Secretary of the Interior to sell to the city of Los Angeles, California, certain public lands in California; and granting rights in, over, and through the Sierra Forest Reserve, the Santa Barbara Forest Reserve, and the San Gabriel Timberland Reserve, California, to the city of Los Angeles," but which said structures or lines may have been actually constructed wholly or in part outside of the rights of way approved to said city: *Provided, however*, That applications for such rights of way, accompanied by necessary plats descriptive of the rights of way sought to cover said structures or lines as heretofore actually constructed, shall be filed in the United States land office of the land district wherein the

land affected may be situate, within one year from the date of this enactment, and which applications for such substitute rights of way shall be accompanied by relinquishments of rights of way heretofore approved and for which the rights of way applied for under this act are substitutes: *And provided, further,* That this enactment shall not be construed to deprive said city of any rights it might have under any general laws now existing or hereafter enacted to acquire rights of way for purposes described in such general laws: *And provided, further,* That all rights of way herein and hereby granted, and all other rights of way hereafter granted under general laws, for the purposes herein enumerated, over lands within the operation of this act, shall be with the reservation of the power to thereafter grant other rights of way by easement or permit conflicting with such prior grants or permits, for the purpose of permitting crossing of rights of way or for limited distances necessary common use of prior rights of way and for rights of way for roads, under such conditions as the head of the department shall find necessary and shall determine to be properly protective against interference with and not detrimental to the construction, operation, and maintenance of the works of prior grantees or permittees: *And provided further,* That no rights of way for reservoir purposes shall be hereafter granted either by way of easement or permit, to said city, upon lands within the operation of this act, for storage of water to be used in generation of power, where the granting of such easement or permit will interfere with the use of the water proposed to be stored, for irrigation purposes, unless said city shall provide such secondary storage as will permit the use of such stored water for irrigation after use for power generation: *And provided further,* That the grant herein and hereby made to said city of Los Angeles is made upon express condition that said city shall within the period of one year from date of this enactment put to actual use as a source of water supply for said city, the lands purchased by said city from the United States, for $1.25 per acre, under the terms of section 4 of said act approved June 30, 1906, and said city shall within said period of one year submit to the Secretary of the Interior a satisfactory showing of such use of said lands, and unless said Secretary shall accept such showing as satisfactory, and shall so certify, no rights shall be acquired by said city under or by virtue of anything in this act contained; and said city shall contribute to the Reclamation Service fund of the United States, one-half of the expense of maintaining proper stream measurements of the Owens River and its tributaries, and measurements of ground waters, and artesian and pumping flows from the area falling within the operation of this act, and the records of all such measurements shall be public records and shall be open to public inspection: *And provided further,* That this act shall be null and void in matter of conferring upon said city of Los Angeles any rights unless, within 90 days after its enactment said city of Los Angeles shall deposit with the Secretary of the Interior a proper instrument evidencing the acceptance by said city of the terms and conditions of the foregoing proviso.

FIRST ANNUAL REPORT OF THE LOS ANGELES AQUEDUCT, WILLIAM MULHOLLAND, CHIEF ENGINEER, MARCH 15, 1907.

Attention is here called to various portions of this report and to several material quotations therefrom.

Pages 12–13 explain that Los Angeles should not compete for water with its own tributary agricultural territory. Hence the necessity for going into Owens Valley for its water.

Page 16 says that the aqueduct supply will be 400 second-feet, and that "1,000,000 people will require about one-half of this supply, and the remaining 200 cubic feet per second, or 10,000 miner's inches, would be available for irrigation uses."

Page 18 says the proposed city project was presented to Chief Engineer Newell and Supervising Engineer Lippincott, of the Reclamation Service, in the fall of 1904.

Page 21 contains very significant statements, indicating that officials of the city were able to foretell criticism of the Reclamation Service in connection with the cooperation of that governmental agency with the city, and also significant as showing the stopping of all work by the Reclamation Service in January, 1906. We quote the following from this page of the aqueduct report:

"No promises or agreements were ever made upon the part of the Reclamation Service or any of its authorized agents to build any project in the Owens

Valley. The Reclamation Service stopped all work on the Owens Valley project in January, 1906, and has not prosecuted any field work in that region since that time."

Why did Mr. Mulholland deem it necessary to incorporate in his report the statement that no promises had been made by the Reclamation Service?

Page 28 contains the following statement of facts, showing the extent to which the public land laws were practically set aside as to large areas, for the sole purpose of preventing settlers from acquiring any rights which might interfere with the proposed operations of this great municipal monopoly:

"The President, in order to still further assist the city of Los Angeles, by an Executive order, withdrew all lands in bulk along the line of the proposed aqueduct and also in the Owens Valley, which might be of possible use to the city, and which might be filed upon by individuals or corporations prior to the time when the city could complete its surveys and file definite rights of way maps, as required by the department. This withdrawal has been of great advantage to the city."

Pages 35–37 mention Long Valley Reservoir, and it is said of it:

"The province of the Long Valley Reservoir site would be to hold over waters from years of excessive stream flow like 1906, for years of deficient stream flow such as 1898 or 1905. Its function, therefore, is purely annual, intended to meet unfavorable conditions during cycles of dry years."

Pages 43–44 refer again to Long Valley Reservoir site, and of conditions in dry years, and it is said:

"The conditions during such a year may be met partially by pumping from the gravel beds in Owens Valley."

Page 47 shows extension of the national forest boundaries for the express purpose of protecting the city and to prevent settlement on the lands. In part it is said:

"This forest reserve will permanently prevent the taking up of public lands therein in this district. * * * The city has requested these extensions. * * * The Bureau of Forestry throughout the entire period when the city was considering this project, has repeatedly aided the city in this enterprise."

Pages 56 and 58 contain the following statement:

POWER PLANTS.

Particular reference is made to the portion of the report of the board of engineers relative to the development of water power. The most important site is in the San Francisquito Canyon, about 45 miles from the city of Los Angeles. A total drop of nearly 1,500 feet is available at this point. Another minor site for power delevopment may be found a short distance below the end of the aqueduct, in the San Fernando Valley. Another opportunity for power development occurs near Little Lake, 150 miles northerly from Los Angeles, where a fall of 270 feet can be obtained. The average continuous output of power with a complete water supply from these plants is estimated by the board of engineers at 49,000 horsepower. The Fairmont Reservoir site at the intake of the main plant will permit of the water being liberated for this power as the demand occurs in the city. The water may be conserved for this purpose during legal holidays and nights, and liberated during working hours in such a way as to meet the demands. This the board estimates will permit the city to enter into contracts for a total output of 93,000 horsepower, measured at the point of delivery in hours of greatest demand.

The board finds that the conditions for the economic development and maintenance of power are very favorable, and its safety against interruption or diminution by drouth, and the permanent character of the acqueduct, tend to make the power development feature particularly attractive and valuable. Mr. E. F. Scattergood, an electrical engineer of extended experience in the construction of hydroelectric power plants in southern California, has made a detailed estimate on the cost of the installing the power plants, and his report is attached as Appendix J.

The proposed plan is to build the aqueduct for the purpose of supplying water for municipal purposes, and after its completion, if the citizens of Los Angeles consider it desirable to install these power plants, they may subsequently be built as independent works. The installation of power has not been included in the acqueduct estimates, because the power situation is considered as wholly independent of the proposition of supplying water and should stand on its own merits.

Page 107, being engineering report, says of Long Valley Reservoir:

"This reservoir is well located to serve as a yearly regulator of the supply."

Page 109, after referring to possible shortage of water at times, says:

"This deficiency can be met by an additional supply of 40 second-feet from July 1, 1905, to January 12, 1906, obtainable either by pumping from the gravel fill of the Owens Valley or by storage in Long Valley as shown later."

On pages 110 and 111 Long Valley Reservoir is again referred to as a "yearly regulator."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 20, 1904.

REGISTER AND RECEIVER,
Independence, Calif.

SIRS: By your letter of February 10, 1904, you retransmitted map and field notes, in duplicate, filed by Thomas W. Key, et al, relating to their application for right of way for three reservoirs, located in T. 8 S., R. 31 E. and unsurveyed T. 8 S., R. 30 E., M. D. M., which papers had been returned to you for correction by letter "F," of November 6, 1903.

By office letter "F," of February 24, 1904, the matter was submitted to the Director of the U. S. Geological Survey for a report as to whether the proposed right of way would interfere with any contemplated project by the Government under the Reclamation Service.

On April 5, 1904, the director reported that—

"In pursuance of a report from our engineer in charge of the work in Southern California, I have to advise you that the proposed right of way will be in serious conflict with the Owens River project, upon which the Reclamation Service is now engaged in surveys and engineering investigations.

"The approval of this application would be very detrimental to the carrying out of this project, as the water proposed to be stored in these reservoirs will be needed for the Reclamation Service, notice of the appropriation of which has already been filed"—

And he recommends that this application be rejected.

In view of the above statement and the recommendations, the application is hereby rejected, subject to the usual right of appeal. You will properly notify the applicants of this action and at the expiration of the time allowed for appeal you will make prompt report to this office what action has been taken in the premises.

Very respectfully,

(Signed) W. A. RICHARDS, *Commissioner.*

R. C. M.

NOVEMBER 29, 1907.

Mr. A. C. HARPER,
Mayor of the City of Los Angeles, Calif.

SIR: I have considered the letter of November 1, 1907, signed by you, the president of the board of public works, and the chief engineer of the bureau of Los Angeles aqueduct, relative to action on any applications for rights of way for power plants, irrigation canals, railroads, and power lines in the drainage basin of the Owens River, which may have been filed or may be filed.

As you know, there have been certain lands in the Owens River Valley withdrawn from all disposition for the benefit of the city of Los Angeles besides those covered by the withdrawal made for the Owens River project under the reclamation act, which project was, on July 12, 1907, declared abandoned by the Acting Secretary of the Interior; but the order of withdrawal therefor was continued in force for three years from June 30, 1906, the date of the act which granted to the city certain rights of way, unless the city of Los Angeles advises the department that it does not desire to acquire any more of such land. Therefore, all applications for rights of way which are on file or which may be filed and which conflict with any applications filed by the city of Los Angeles or affect any of the withdrawn lands, will be suspended for the period mentioned unless the city consents to action on such cases at an earlier period. In regard to other applications where it does not appear that they affect any of such withdrawn lands of "(or)" conflict with any applications filed by the City of Los Angeles, I do not feel that I would be justified in suspending action

on such cases for so long a period. If it is found, however, that the waters to be used in connection with such application are from the Owens River Drainage, notice might be given to the city, if it so desired, and a reasonable time allowed in which to file such objection as it sees fit.

(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

STATE OF CALIFORNIA,
County of Inyo, ss:

Charles L. Phelps, being first duly sworn, upon oath makes the following statement:

On June 10, 1901, in company with Claude Inman and Thomas W. Key, I located the lakes upon the North Fork of Bishop Creek, in Inyo County, Calif.; had them surveyed and platted and an application made to the United States land office at Independence for a right of way for reservoirs for irrigation and domestic purposes.

Subsequent to such application we were notified not to trespass upon said ground nor to do any work whatever until our rights of way had been approved.

Our purpose had been to secure certain tracts of land which lay tributary to Bishop Creek for our homes, but which it was impossible to secure without constructing such reservoirs, as the natural flow of said streams at low stage would not permit of other diversions, while by storing the flood waters we could secure an abundance of water at very reasonable cost. We were men in very moderate circumstances, and to secure the construction of these dams had assured a large number of the residents of the vicinity of Bishop that we would allow them to assist in the construction, all parties to bear equally the burden of cost and to share equally the water thus stored. We had the definite assurance from several, who pledged not less than $8,000 or $10,000 for the construction, and they were assured that they would be allowed to cooperate as soon as the right of way could be secured.

Among those who had agreed to participate in the construction and use of said reservoirs were E. W. Powers, D. R. McLaren, J. H. Bulpitt, G. J. Dixon, I. W. Hogle, Harvey Adams, John Albars, George Carpenter, Alonzo I. McKellip, and others. Negotiations were also made on behalf of the stockholders of the Owen River Canal Co., which had a surplus water right of 5,000 inches in said stream, and which could be made very valuable by thus impounding a large portion of this water.

During the years 1903 and 1904 we had several interviews with Mr. J. C. Clausen, engineer in charge of the Reclamation Service investigations on Owens River and in the Owens River Valley.

On April 20, 1904, we were notified of the rejection of our application for right of way on the ground that it would interfere with the proposed reclamation project of the Government upon Owens River. We appealed the case, as our use of the water was for identical purposes, and the act of June 17, 1902, as we believed, guaranteed our rights to such use of this water.

Our rights before the department had been continually maintained, and we stood ready at all times to proceed with the work of construction. The citizens who had offered to assist in this work had always been in a position to begin work whenever we could secure the approval of our right of way.

On July 12, 1907, the Owens River reclamation project was abandoned, and on December 20, 1907, the lakes at the head of Bishop Creek were restored from the reclamation withdrawals. Notwithstanding these restorations the department had continually failed to act upon our application or to grant our right of way.

On January 23, 1904, and on February 20, 1907, the lands which we had intended to secure and upon which we had intended to use this water, which also covered the lands of a number of other applicants, were withdrawn for forestry purposes. The act permitting homestead entries in forest reserves expressly excepted Inyo County from its provisions, thereby making it impossible for us to secure these lands. Desert entries could not be filed within the reserves, and we were thus absolutely deprived of our rights, both as to the land and the water.

CHARLES L. PHELPS.

Subscribed and sworn to before me this 15th day of January, 1913.

WM. B. HIMROD,
Notary Public in and for the County of Inyo, State of California.

STATEMENT OF MR. GALEN J. DIXON, FOR OWENS VALLEY IRRIGATORS—Resumed.

Mr. DIXON. There are two or three papers in the course of the proceedings that we would like to have introduced as well.

The CHAIRMAN. When you come to them, we can do that. Proceed, Mr. Dixon.

Mr. DIXON. As an additional amendment suggested by the Owens Valley irrigators, on page 8, line 15, add at the end of the present bill the following:

That the grant herein and hereby made to said city of Los Angeles is made upon express condition that said city shall, within the period of one year from date of this enactment, put to actual use as a source of water supply for said city the lands purchased by said city from the United States for $1.25 per acre under the terms of section 4 of said act approved June 30, 1906, and said city shall, within said period of one year, submit to the Secretary of the Interior a satisfactory showing of such use of said lands, and unless said Secretary shall accept such showing as satisfactory and shall so certify, no rights shall be acquired by said city under or by virtue of anything in this act contained; and said city shall contribute to the Reclamation Service fund of the United States one-half of the expense of maintaining proper stream measurements of the Owens River and its tributaries, and measurements of ground waters, and artesian and pumping flows from the area falling within the operation of this act, and the records of all such measurements shall be public records and shall be open to public inspection.

Now, the object sought by the irrigators of Owens Valley in this amendment is largely one of protection, and I wish to repeat what we have said heretofore—that we are not seeking to deprive the aqueduct system of its full quota of water nor to prevent the developments of such power as might be possible along the line of the aqueduct as constructed, nor to prevent the development of power elsewhere on the Owens River watershed that does not affect our irrigation interests.

I think we are perfectly fair and plain in our statement of what we wish—that we wish protection.

We wish to call your attention to the fact that this proposed use of the storage in the Long Valley reservoir for power purposes is a very distinct variation from the plans heretofore proposed by the city, and the use of these waters by storage for the generation of power affects us in a very material and different way from its use as an annual equating storage reservoir. The means by which this is accomplished is that the storage of the water is for the purpose of equating it for power purposes for the whole year—that is, equating the stream for the whole year, including the stored water.

It is not their purpose to store any of the winter flow, because the winter flow is generally less than the equated flow; but it is their purpose to store the flood flow of the summer season and equate that flow during the whole year. It has been our practice during the past two years to utilize this flood flow throughout the heavy irrigating months of June, July, and August, and we sought means of storing this water in such a way that we could divert larger volumes of water during the months of April and May, our seeding season—and September and October, the closing months of our irrigating season. This equation for power is going to lessen our supply during the irrigating months—that is, where we ordinarily

use 20,000 or 30,000 inches of water we will cut down to from 16,000 to 18,000 inches, or more than 50 per cent.

Senator CHAMBERLAIN. What is your rainfall up there annually?

Mr. DIXON. It is very low. It runs from 3 inches up to 7 or 8, ordinarily.

Senator CHAMBERLAIN. So that you are dependent on irrigation?

Mr. DIXON. Wholly dependent on irrigation. For the last three years the rainfall, I think, has fallen below 4 inches. This present season Bishop has not had over 2 inches.

Mr. RAKER. Mr. Dixon, tell the committee whether or not the Long Valley Reservoir is above all these works—above your works and above the intake.

Mr. DIXON. It is.

Mr. RAKER. There is no dam yet in the canyon so as to store the water in Long Valley?

Mr. DIXON. No, sir.

Mr. RAKER. They have started one?

Mr. DIXON. Yes, sir; at the upper end of the canyon on the Long Valley dam site.

Mr. RAKER. The city, as yet, does not own Long Valley?

Mr. DIXON. No; it does not own it all.

Mr. RAKER. Does it own the lands so that it can start in and control the territory to the extent suggested by Mr. Mathews or Judge Dixon?

Mr. DIXON. My understanding is that the public land in Long Valley Reservoir site is already patented to them.

Mr. RAKER. The city owns the floor of the valley?

Mr. DIXON. Up to the 100-foot level they own all of the land; while from that level up to the 150-foot level they have purchased only the public lands from the Government.

Mr. RAKER. If the city of Los Angeles completed this dam you could pick up the stored waters, and others, and run them into your reservoir that you ask to have—Fish Slough—which this bill provides should be excluded?

Mr. DIXON. I think that amendment is in the bill.

Mr. RAKER. Fish Slough is not given to Los Angeles and you people can go ahead with it. Now, if the city of Los Angeles stores water in Long Valley that water could be picked up and run into your reservoir; is that right?

Mr. DIXON. Yes, sir. That is the physical possibility.

Mr. RAKER. Now, you do not want to in any way retard or affect this project of Los Angeles at Long Valley, or, otherwise, in this Owens Volley canyon, for the development of hydroelectric power or otherwise; you do not want to affect their right to proceed?

Mr. DIXON. We do not desire to, if it can be done without interference with our use of the water after the city uses it for power above us.

Mr. RAKER. They have stated heretofore, in the former hearings before the House committee, that they were not seeking to control the waters in this bill.

Mr. MATHEWS. That was right then, and it is right now.

Mr. RAKER. Neither one of these parties can be injured. Is that right, Mr. Dixon? They do not claim that they desire more water above the intake?

Mr. DIXON. That is my understanding of their statements.

Mr. RAKER. You do not want to do anything to deprive the people of Los Angeles of the right to store water in this land if it does not interfere with your rights?

Mr. DIXON. No, sir.

Mr. RAKER. If the city of Los Angeles stored water in the reservoir and allowed sufficient to flow at proper times so that you could pick it up and run it into Fish Slough Reservoir, would that be all right?

Mr. DIXON. Yes, sir.

Mr. RAKER. Ought that not to be done?

Mr. DIXON. Surely; that is exactly what we are asking.

The CHAIRMAN. Mr. Mathews, what obstacles are in the way of carrying that out?

Mr. MATHEWS. I would like to ask this question: Does not the power company own or control the so-called Fish Slough Reservoir?

Mr. DIXON. They do, in a sense.

Mr. MATHEWS. Don't they own nearly 900 acres of land in that reservoir site?

Mr. DIXON. Yes; but they have offered it to the citizens.

Mr. MATHEWS. On conditions which you have not accepted.

The CHAIRMAN. What power company have you reference to?

Mr. MATHEWS. The Southern Sierras.

Mr. DIXON. That property was purchased with the absolute purpose of storing that water, in connection with the citizens of the valley, a number of years ago.

The CHAIRMAN. What agreement have you, if any, with the power company?

Mr. DIXON. We have no agreement, excepting that the power company has offered to sell all of their lands there, and we have made a proposition looking to their purchase.

The CHAIRMAN. What is your idea as to the result of these investigations? Do you intend to purchase it, or is there a reasonable doubt that you may do it?

Mr. DIXON. We are in process of organizing an irrigation district for the purpose of doing that very thing.

The CHAIRMAN. Under the laws of California, can you borrow money on an irrigation district—that is, can an irrigation district, created under the laws of California, borrow money for the purpose of purchasing this land?

Mr. DIXON. It can; and it has the right of eminent domain in such a way that it can go in and condemn that land if necessary, and that is the purpose of the valley citizens—that they shall own and control this reservoir themselves for the purposes of irrigation.

The CHAIRMAN. Now, Mr. Mathews, is there any objection on the part of the city of Los Angeles, if the people of Owens Valley purchase the Fish Slough Reservoir, to their getting sufficient water in order to fill that reservoir?

Mr. MATHEWS. There is no objection if they take it at the time of the year when the river is high.

The CHAIRMAN. That is the time they would take it, is it not?

Mr. MATHEWS. Some of them want to take it in the winter time, when the flow of the stream is very low. At that time we require all

of it. The heavy flow of the stream is in the six months' period embracing the irrigation season.

The CHAIRMAN. May 15 to September 15.

Mr. MATHEWS. There was another point in reference to this I could explain, in connection with the pending negotiations between the city and the representatives of the so-called associated ditches of that valley for storage in Long Valley, which will be subject to their irrigation rights, making Long Valley the common place of storage both for the city and the irrigators, with the understanding—if not the understanding, the inevitable result—that the storage will be provided at the expense of the city with full recognition of their irrigation rights.

The CHAIRMAN. Does that affect the people represented by Mr. Dixon?

Mr. MATHEWS. We could not install that storage without getting their consent and getting agreements from them because their irrigation rights would be affected. The city is willing to treat with them on a basis that will take care of their irrigation, as it is now, and in a better way than now—a storage that will take care not only of the high waters of the year as these ordinarily run, but the excessive flows of extraordinary years, which occur every few years. In these years there is a great waste of the water, it running down by the intake of the aqueduct into Owens Lake, which is a salt lake, and that storage is contemplated for the benefit of the entire valley as well as the city. That matter is now up and committees are acting for the purpose of working out a plan of that sort.

The CHAIRMAN. What do you say about that, Mr. Dixon?

Mr. DIXON. I will allow myself to be confirmed by Mr. Beckman, who was present at this conference as one of our committee, that the proposition of the city merely meant three gentlemen representing the city appeared in our midst and, instead of submitting a proposition, asked us, "How much water do you want?" Mr. Mulholland, on behalf of the city, presented the fact that the aqueduct would absolutely require all of the winter flow.

You will pardon me going into more detail, but as a matter of fact, Owens Valley started in years ago with a project for the reclamation of their lands and filed their applications for rights of way in due form. At that time there was not an opposing application of any kind or description. We had the field to ourselves. We were all jointly interested in the thing.

You must understand that the flow at times is very low. The past year it ran down to between 7,000 and 8,000 inches, when ordinarily we should have had 25,000 or 30,000. We have, as a rule, the low stages of the river at our seeding and low stages at the close of our crop season in such a way that it restricts and limits our development, and in order to offset that, in order to provide for the irrigation of our lands, we were compelled to store water, and we organized for the purpose of making a district organization for that purpose.

The CHAIRMAN. Let me ask you a question there. Would it be better for the people of Owens Valley to store the water in the Fish Slough Reservoir or in the Long Valley Reservoir?

Mr. DIXON. It would be better to store in Fish Slough, for the simple reason that the equated flow of Long Valley Reservoir is ob-

solutely inadequate, and the bulk of their storage is not designed by the city to be used for our purposes.

The CHAIRMAN. We recognize that; but suppose you had just as much water delivered to you during the irrigating season from the Long Valley Reservoir that you could get from the Fish Slough Reservoir, would not that be just as convenient and just as beneficial to the irrigators you represent?

Mr. DIXON. That is true, Senator, but I beg to call your attention to the fact that that is an absolute impossibility.

The CHAIRMAN. Now, say why it is.

Mr. DIXON. Simply because the stream flow from the upper reaches of the Owens River are limited. The city would equate the flow to about 16,000 inches of water.

The CHAIRMAN. There is a part of the year that you do not want 16,000 inches and there is a part of the year when you want more than that?

Mr. DIXON. A part of the year we want twice that.

The CHAIRMAN. At the time you want that water the flow is exceedingly large—how many inches in your flood waters?

Mr. DIXON. We have approximated an actual irrigation use of about 30,000 inches; the flood flow runs up to about 50,000 to 75,000 inches, and occasionally more.

The CHAIRMAN. In other words, you would want to use all of the water for the irrigating season that there is at flood time?

Mr. DIXON. No, sir; we could not use all of the flood waters at that time, because at the flood season——

The CHAIRMAN. You would have no objections to Los Angeles using that excess water?

Mr. DIXON. No objections to their using the excess above 30,000 inches, provided we get that much as the equated flow for our irrigating season.

The CHAIRMAN. Suppose you can get the 30,000 from the city of Los Angeles reservoir at Long Valley during your irrigating season, would that not be just as well as to have another reservoir; and then let the Los Angeles people use all over and above 30,000 inches not required by you?

Mr. DIXON. But that is an absolute impossibility; the water is not there. If they say they will cut down to 10,000 inches for the balance of the season in order that we may have 30,000 for the irrigating season, that would be running it up and down the scale and would not be equating the flow for the city's power development. That proposal has not been made and they have no intention of equating it to that extent in our behalf.

Mr. RAKER. Is there not a considerable amount of water that flows into Fish Slough that does not flow into and through Long Valley?

Mr. DIXON. A small amount. It amounts to 3,000 or 4,000 inches.

Mr. RAKER. What is the source?

Mr. DIXON. That comes from Rock Creek and Pine Creek. It flows into the Owens River gorge just below the city's lowest proposed power plant. None of the waters of Owens River run into Fish Slough, which is a depression to one side; the waters have to be diverted into Fish Slough.

Mr. RAKER. Is there any considerable supply of water that you can divert into Fish Slough that does not come from Long Valley?

Mr. DIXON. No, sir.

Mr. RAKER. If you could use Fish Slough as you wanted, supposing the city was required to complete for joint use the Long Valley reservoir, it could get all the benefits it wanted, for irrigation as well as for hydroelectric energy, and if they will permit that water to come down, there would not be any conflict?

Mr. DIXON. No, sir; there would not, if the city would allow the water to come down as required for irrigation.

The CHAIRMAN. That is why I can not understand why it would not be better to have one great reservoir that will give both to the city and the irrigators the water they want. That looks to me like a business proposition. You say that can not be done?

Mr. DIXON. Absolutely, it can not be done.

The CHAIRMAN. I can't see why.

Mr. RAKER. You mean it can not be done because the city won't enter into an agreement, or it can not be done physically?

Mr. DIXON. It can not be done physically, because the water is not there. The water comes in at different seasons and at different places.

Senator CHAMBERLAIN. I will have to ask you to excuse me, as I had a conference arranged before I was notified of this meeting.

The CHAIRMAN. All right, Senator.

Mr. MATHEWS. Before he goes, if the Senator will permit me to read an amendment to the bill which was agreed upon by the parties:

And provided further, That any approval of rights of way for reservoir purposes for the storage of water for use in whole or in part for the generation of electric power, under the provisions of this act, shall contain the express condition that such reservoirs shall not, without the consent of the parties having irrigation rights which would be affected by such storage, be used in such manner as will interfere with the use of such stored water for irrigation purposes, unless provision shall be made by said city for secondary storage for such irrigation use.

We have agreed on that.

Mr. CONSAUL. I do not apprehend that that would apply to Long Valley Reservoir. That amendment applies to future approvals.

Senator CHAMBERLAIN. I will read the hearing, of course.

The CHAIRMAN. The time is flying, and I guess, Mr. Dixon, you had better proceed and get through.

Mr. DIXON. There are many angles that are necessary to consider in order to make this plain, and you certainly can not pass intelligently on it unless it is made plain.

The CHAIRMAN. I can not yet understand, if the Long Valley Reservoir is large enough to take care of the flood waters, and by doing so they can take care not only of their power but your irrigation—I can not understand why that is not the proper thing to do.

Mr. DIXON. The equated flow, as they have purposed putting down through the gorge, is from 16,000 to 18,000 inches.

Mr. MATHEWS. We have asked you how much you want——

The CHAIRMAN. And you will take the balance?

Mr. MATHEWS. It is the city's desire and purpose to make such arrangement with the irrigators, involving storage at Long Valley, as will give them all the water required for their lands.

The CHAIRMAN. That seems so simple——

Mr. DIXON. If that could be provided in the bill, that would be a different question; but in spite of Mr. Mathews's statement, he wishes the whole matter left for possible future agreement. In short, the

city says that after it gets what it wants in the way of new grants it will talk with us and may see fit to make an agreement giving us something.

The CHAIRMAN. I do not think the city of Los Angeles can take from you any rights which you have, and this bill is not the place to settle that question. But I have felt like this: That if some agreement could be reached here that would be satisfactory not only to the people of Owens Valley but to the city of Los Angeles, and this could be eliminated, it would be well all around. It seems to me that to maintain one reservoir would be less expense than to have two—less waste, less evaporation, less administration—and if the people of Los Angeles will give the people of Owens Valley the water that they are claiming, and give it through their reservoirs, it seems to me that that is the proper thing to do.

Mr. DIXON. Well, Senator, if you will pardon me, they have not agreed to do anything of the kind, and more than that, they have intervened in such a way as to dispossess us. You have said here repeatedly that you can not legislate on questions of water rights.

The CHAIRMAN. We can not.

Mr. DIXON. Notwithstanding that fact, you passed the reclamation act, and under the reclamation act you authorized the United States Government to come in as an appropriator of water—you authorized their agents to come in as purchasers of water rights, and to exercise the right of eminent domain, and I will file papers showing consideration of water rights by the Land Department.

The CHAIRMAN. That would not interfere with any water rights held by an individual or a corporation.

Mr. DIXON. But if the agents of that service come in and they say, "We require this for the reclamation purposes of the Government," and either compel or induce those people to step aside in behalf of the reclamation project, and thereafter the Reclamation Service takes it from them in behalf of the United States Government, and then, instead of using those rights for the benefit of the United States Government, it turns those rights over bodily to the city, as was in the 1906 act provided, you have dispossessed us, and there is no use in appealing to you if it is the purpose of this Congress to confirm those grants.

The CHAIRMAN. Congress can not confirm it if you had a prior right. You can not be dispossessed of your rights, either by the Reclamation Service or any other governmental agency.

Mr. DIXON. If you wish us to introduce our water rights——

The CHAIRMAN. No; Mr. Dixon, I guess there is no need of going into the water rights. Evidently we can not understand it. The Reclamation Service has no power, by act of Congress or otherwise, to dispossess any individual or corporation from an acquired water right in the United States. They can make an agreement with the water users or owners to develop a larger irrigation system, but at all times must grant to the original water owner all the water that he ever had. I think that has been the policy of the Government and this is the first time that I have had it intimated otherwise.

Mr. DIXON. The facts are simply these: The Reclamation Service agents, Mr. J. C. Clauson and Mr. R. S. Hawley, came into the Owens River Valley in 1903, representing to the citizens of Owens Valley that they were the agents of the United States Government

under the Reclamation Act, that they proposed to put in a large project, and that they required the reservoirs that were then being developed by the citizens of that community for the purposes of the reclamation development. In some instances they requested our people, as they did me individually—and I know this because I am speaking from first-hand information, and I have abundance of proof of the facts—they so represented to me as an individual and asked me to come in for a conference, which I did, speaking for myself as an individual and as secretary of the associated ditches, as I was then, and we were advised that we should hold our reservoirs subject to the reclamation development.

On the Big Pine Creek Mr. J. C. Clauson and Mr. R. S. Hawley found the men at work—a dozen or 15 men constructing a big dam on Big Pine Creek; they found the engineers just starting up the hill for the purpose of finishing the surveys on several of the other lakes. I know directly about this and was directly concerned as an individual. My brother was engineer in charge of the work, and I have a sworn statement here which I would like to put into the record.

(The paper referred to is printed in full as follows:)

STATE OF CALIFORNIA,
County of Inyo, ss:

W. G. Dixon, being first duly sworn, deposes and says; that he is and has been a resident of the county of Inyo, State of California, for more than 20 years, last past, and resides at the town of Big Pine, in said county and State; that he is by profession a civil engineer; that during the summer of the year 1903 he was in charge, as engineer, of certain work on the reservoirs of the Big Pine Water Storage Association located upon the lakes in the Sierra Nevada Mountains in Inyo County, Calif., said lakes being the source of stream known as Big Pine Creek; that at that time dams were being constructed upon two of said lakes and that surveys were being made for the purpose of locating dams to impound water in other lakes at the head of said Big Pine Creek.

This work was being done under locations made by citizens of Big Pine and vicinity for the purpose of storing water for irrigation and domestic purposes in Owens River Valley at and near the vicinity of Big Pine, Calif.

That, while affiant and associates were at work surveying sites for said reservoirs, J. C. Clausen and R. S. Hawley, engineers connected with the United States Reclamation Service, came upon the ground where affiant and his associates were engaged in surveying said reservoirs and said Clausen stated to affiant: that the Government of the United States would require those lakes and reservoir sites for the use of the Government reclamation project and that he, said Clausen, would be compelled to stop affiant and his associates from further work thereon.

Said Clausen further stated that the Government would construct storage reservoirs on said lakes and would impound water on a much larger scale than would be done by the Big Pine Water Storage Association and that the Government would supply the citizens of Big Pine and vicinity the amount of water to which they were entitled and would also provide additional water for their lands, not then under cultivation, at Government rates. Said Clausen further stated that in case the Government should not require said lakes for reservoir purposes that they would be turned back to the citizens who would then be allowed the use of the plats and field notes made by the Government survey.

Affiant states that relying upon the authority of said J. C. Clausen, engineer for the Reclamation Service, that affiant then and there desisted from further prosecuting his work in the survey of said lakes for reservoir sites and storage purposes.

W. G. DIXON.

Subscribed and sworn to before me this 16th day of January, A. D. 1913.

[SEAL.] A. L. ANDERSON,
Notary public in and for the County of Inyo,
State of California.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 20, 1904.

REGISTER AND RECEIVER,
Independence, Calif.

SIRS: By your letter of February 10, 1904, you retransmitted map and field notes in duplicate filed by Thomas W. Key et al. relating to their application for right of way for three reservoirs, located in T. 8 S., R. 31 E., and unsurveyed T. 8 S., R. 30 E., M. D. M., which papers had been returned to you for correction by letter F of November 6, 1903.

By office letter F of February 24, 1904, the matter was submitted to the Director of the United States Geological Survey for a report as to whether the proposed right of way would interfere with any contemplated project by the Government under the Reclamation Service.

On April 5, 1904, the director reported that—

"In pursuance of a report from our engineer in charge of the work in southern California I have to advise you that the proposed right of way will be in serious conflict with the Owens River project, upon which the Reclamation Service is now engaged in surveys and engineering investigations. The approval of this application would be very detrimental to the carrying out of this project, as the water proposed to be stored in these reservoirs will be needed for the Reclamation Service, notice of the appropriation of which has already been filed."

And he recommends that this application be rejected.

In view of the above statement and the recommendations the application is hereby rejected, subject to the usual right of appeal. You will properly notify the applicants of this action and at the expiration of the time allowed for appeal you will make prompt report to this office what action has been taken in the premises.

Very respectfully,

W. A. RICHARDS,
Commissioner.

They stated to those gentlemen and stated to me, "We require these reservoirs for the purpose of the Government, and we will be compelled to stop you." In another instance Mr. J. B. Lippincott, individually, as chief of the Reclamation Service in southern California, was on the ground and stopped other of the men. In the cases on Bishop Creek I have the sworn statements of Mr. Thomas W. Key and Mr. Charles L. Phelps, who had water filings and had locations for reservoirs on the north lakes. They were also stopped in like manner. My own applications were those on Rock Creek and Convict Creek, both of which they said they would require for purposes of the Government reclamation project. They stated definitely to us what their purpose was. They said that if the Reclamation Service came in and constructed these reservoirs, as it was within their power to do, on an immensely larger scale than we could do for the time being, they said: "You people can get all the water you require and are entitled to, and these waters will be used in the development of the public domain in your community." Then they stated on top of that, in my own instance and also in the instance of the other parties I have referred to, that in the event the Reclamation Service should not use the reservoirs they would be restored to the citizens, and not only that, but we would be given the data, the engineering notes and investigations from the department, to be used in connection with our own projects.

Now, I do not know if there is one rule that applies to the Owens River country and another rule of the department that applies to other irrigation projects, but I do know in one case that came before me, as register of the United States land office at Independence, that,

on the Walker River, under the Warren A. R. Loose application, the department said:

This shall not disturb the applicant's rights to be reinstated.

I have the exact wording some place, but I can not refer to it at the moment.

Mr. RAKER. You can insert that in the record.

Mr. DIXON. Yes; I will insert that in the record. That was exactly what was stated to us would be the case with us.

Mr. RAKER. Right there, let me ask you a couple of questions. I think we can expedite these matters very much. I want to submit this amendment to Mr. Mathews as a condition for this grant, to that end—"That said city shall permit to flow into the channel of Owens River from Long Valley Reservoir, sufficient water to provide for filling and properly utilizing the Fish Slough Reservoir for irrigation purposes," and these irrigators take care of all the water. Can you see any objections to a provision of that kind?

Mr. MATHEWS Yes, sir; we object to that, Judge Raker. We object to any adjustment of the water rights in this bill.

Mr. RAKER. This is not a water rights proposition at all.

Mr. MATHEWS. That is just what it is.

Mr. RAKER. It seems to me from your statement and from the statement of Mr. Dixon, that if you have stored the water properly, it could not be contended that you were storing this water in violation of the rights of any of the parties, so, what is the trouble with storing that water and developing your resources and permitting those people to pick up the water as it comes down and put it into Fish Slough?

Mr. MATHEWS. Is that your question?

Mr. RAKER. Yes.

Mr. MATHEWS. Our position is this: We have our water rights, and they have theirs, and we are treating with them now for the purpose of making Long Valley Reservoir a practicable scheme, where we can store water for their benefit and for our benefit, and have the release of the water on a scale and schedule that will meet their situation. We have entered into negotiations and asked them what amount of water in addition to what they have now in the summer time, will be sufficient to meet their requirements. This will involve, among other things, an additional important reclamation. Owing to the manner in which the ditches are constructed, something like 15,000 or 18,000 acres of land in Owens Valley are waterlogged, and that condition is recognized, and should be rectified. That excess water should be stored. We are treating with them, on the basis of their rights, with a view to getting their consent to establish this reservoir, which is on land that the Government itself proposed to use for this purpose, and we hope to reach a satisfactory result.

Mr. RAKER. If that be true, and if they put in a proper dam to make a proper reservoir at Fish Slough, it would add to their irrigation and your supply of water for Los Angeles, and if you use the Long Valley reservoir site and allow the water to come down during the months when you would not need it in order to keep a steady supply, but when they would need it for irrigation, then they pick it up and let it go into their reservoir and still hold it, it would hold all the water and protect you and them, and I do not see how, if you agree to that, it would involve any litigation at all.

Mr. MATHEWS. We want to deal fairly with them as well as ourselves, and we do not want the question of water rights determined or adjudicated by legislation enacted by Congress. We can not store that water without their consent, and when we get their consent we will have to do it by agreeing to conditions that will meet their requirements. I do not think it is fair to ask us to adjudicate the question of water rights in this place, or to attempt to incorporate a workable scheme in legislation enacted at this time by Congress.

Mr. RAKER. Let me call your attention to this, if the chairman will permit me for a moment—and I know that is what the committee is interested in: If you are given the right to the land, the fact is you would absolutely control the water situation. There is no disguising that fact.

Mr. MATHEWS. That is not the case, Judge.

Mr. RAKER. Now, if you put a dam in Long Valley to store that water, as you claim you would need the water in summer and winter, what is the objection to putting it in as a condition to the use of that reservoir and all the canals you will need, that you will not interfere—that you will let the water come out when you are through using it, and they may put it in the reservoir?

The CHAIRMAN. Why not deliver the water direct from the reservoir and save that expense?

Mr. RAKER. I think that would be the smart thing.

The CHAIRMAN. Certainly.

Mr. DIXON. If you will allow me to continue, it is absolutely physically impossible——

The CHAIRMAN. Mr. Dixon says it is impossible.

Mr. DIXON. It is absolutely physically impossible, and it simply can not be done without interfering with their project for power.

Now, they speak of wastage of water, and in connection with that I would like to introduce a telegram which I have just received, while the city representatives are here.

The CHAIRMAN. You may put it in the record.

Mr. DIXON. I would like to read it, and have it here, if you desire to have it verified. It is dated—

LOS ANGELES, CALIF., *April 17, 1920.*

GALEN J. DIXON,
Care H. S. Beckman, Powhatan Hotel, Washington, D. C.:

In a joint hearing before city council and water commission on February 9, arguing for lower rates, it was shown by the water users of San Fernando Valley that the city of Los Angeles in the season ending June 30, 1917, and the season ending June 30, 1918, wasted into the Santa Clara and Los Angeles Rivers and into Owens Lake 300 days' flow out of 365 days' flow of the aqueduct. In the season ending June 30, 1919, they wasted 270 days' flow in the same manner. Claims were based upon official report of the board of public service for the above years. Mr. Mulholland was present at the hearing and did not refute these statements, although requested to do so if they were incorrect.

LONGYEAR AND PARTRIDGE,
Members Associated Ditches Committee.

Mr. RAKER. I want to finish my question, so that the committee will understand it—a question addressed to Mr. Mathews and Mr. Dixon both, that the suggestion I made, adding further to it, that they shall not interfere with the complete use of Long Valley Reservoir for power purposes. The very statement that Mr. Dixon has read and the very statement of Mr. Mathews shows that during the

wintertime the waters go to waste. Now, if these Associated Ditch people, in addition to what the chairman has suggested, which seems to me very fair, want to go to the extra expense of building Fish Slough Reservoir, they pick up the surplus water from Long Valley Reservoir, when it can not be used for irrigation—and they must have two or three years surplus—they can bring down in the short season of the year a large amount of water which will go to waste in nonirrigation months, and that water can be picked up and stored in Fish Slough, and there held, when not needed, for use by the farmers for irrigation in the summer months. It seems to me that gives Los Angeles everything she ought to have and gives these farmers what they ought to have, and I say that after an experience of 30 years in examining these matters.

The CHAIRMAN. That suggestion is all right if the Long Valley Reservoir is not large enough to hold the water at all times.

Mr. RAKER. It is large enough.

The CHAIRMAN. That is what I understand.

Mr. RAKER. Is not that large enough to hold this surplus?

Mr. MATHEWS. It is the largest and finest reservoir in the country.

The CHAIRMAN. Your statement is absolutely correct, and I agree with you perfectly if the reservoir was not large enough to take care of all the water, but as long as the reservoir is large enough to take care of all the water and there will be no loss on account of that, then it seems to me the practical way is to make the distribution from that one reservoir.

Mr. RAKER. Just this one suggestion so you may get it clearly before the committee. During the nonirrigating months—November, December, January, February, and March—when there will be a large amount of water coming out of Long Valley for power purposes, it can not be used for irrigation. That water at that time can be picked up and run into the Fish Slough Reservoir and saved.

The CHAIRMAN. Why not keep it in the Long Valley Reservoir?

Mr. RAKER. It must be taken out for power purposes.

The CHAIRMAN. But not all of it.

Mr. RAKER. Now, Los Angeles will want more water in winter than ordinarily runs in the stream. They have a supply for three years. That surplus will come down the river and be picked up and held in the Fish Slough for storage, if there is any. That is the crux of the whole thing.

The CHAIRMAN. I can not see why the irrigators of Owens Valley want two reservoirs if one reservoir will hold the water.

Mr. H. S. BECKMAN. I am a resident of Inyo County and live a part of the time in Los Angeles. We are perfectly willing to rely on Mr. Mathews's statement that they will supply us with sufficient water if that is really their intention. That is perfectly all right.

If we get the water we do not care whether it comes from Long Valley or Fish Slough, but you will find, in order that they get the full efficiency of that power, they must equate that stream, and by so equating that stream they can not give us enough water during the summer time to fully provide for irrigation purposes. Now, that is all there is to it.

The CHAIRMAN. They certainly can if the reservoir is large enough. If it is not large enough then that is true. You want two reservoirs,

but if your reservoir is sufficient to hold all the water they can equate the water without a doubt and also deliver the amount of water that they agree to to the irrigators of Owens Valley.

Mr. BECKMAN. If they can do that it is perfectly all right.

The CHAIRMAN. But the question in my mind is, is the reservoir in question large enough to hold all the water that is necessary?

Mr. BECKMAN. Yes, sir.

The CHAIRMAN. Then there is no question about it in my mind.

Mr. DIXON. But the fact remains——

Mr. BECKMAN. If we get that protection, and get it in the bill, so that our lands are efficiently irrigated, we are satisfied.

Mr. RAKER. To cinch the matter so that there can not be any misunderstanding with reference to Mr. Mathews's statement or to Mr. Dixon's statement or to Mr. Beckman's statement, if they furnish enough water from the Long Valley Reservoir, and these people do not want the water during the months of November, December, January, February, and March, and want to go to the expense of building a reservoir at Fish Slough, there can not be any possible objection?

Mr. MATHEWS. Yes; a very serious objection.

Mr. RAKER. I can not see it. I can understand the rest.

Mr. MATHEWS. I still have a little time under the Senator's allowance, and will state the objection later.

The CHAIRMAN. We have been nearly an hour now.

Mr. DIXON. I am trying to get at this in a practical way and make it as short as possible. I do not think I can explain this matter without going into some of the details.

The flow of the river in the upper regions is an even flow—a flow of about 18,000 inches. That is the average annual flow, as they have proven in their investigation of a period of 10 years. That is the average annual flow. We have an occasional year—but only once in 25 or 30 years—where the flow is far in excess of that. At such times a larger volume of the waters of the Long Valley region could be stored at that point, but ordinarily, in ordinary seasons, the volume of water that is capable of being stored is only a small proportion of the flood flows during the months of June, July, and August, and those flood flows, instead of being available, as they were available under our water rights, which we intended to utilize for the storage of water before they came in on the scene at all, are now proposed to be equated by the city throughout the full year. That is, when ordinarily there would be six, seven, or eight thousand inches of water in the river they equate it to an average flow of sixteen to eighteen thousand inches for the year, which we are not opposing, and if you will accept our plan they could continue to equate that flow for all times. It does not interfere with them, but if we are to be cut down to a maximum of 16,000, 18,000, or 20,000 inches of water, then we of necessity must be cut down in our proportionate use of the water. We have an area of approximately 50,000 acres of land, about one-third of which has not been developed yet, simply for the reason that man after man, members of our own corporation, have stated to me that they have been prevented and are now being prevented from putting their land under cultivation because their knowledge of the situation is that during the next two months—May and June—there will not be sufficient water to irrigate that land, and consequently they require this stored water.

Now, we, in our proposed amendment, ask that inasmuch as they had secured a large area of unground reservoir lands for the purposes of pumping that they be required to utilize that pumping source of water supply.

Now, at the present time, from the best of information I am able to obtain, they have 28 or 29 wells.

In other words, for the floor of that valley they average about one well or two wells for a township, and, of course, you all know what a township is—23,000 acres, 6 miles square, one-third the area of the District of Columbia, and they have two wells in that area. We have asked that they utilize the underground reservoir.

Of course, they have only 12,000 or 14,000 or 15,000 acres covering the underground reservoirs in their applications, but as a matter of fact, they have large holdings of other lands. They have applied for lands in the Tinemaha Reservoir. They have acquired 4,000 acres there and some river lands, so that they have 15,000 or 20,000 acres, acquired from the Government, and that is the bottom floor of the whole valley and the underflow from the whole valley, through underlying gravel beds, is available for their purpose, and they have applied for it as an underground reservoir.

Mr. Mathews told me here on Saturday in our conference that they were, at the present time, developing about 2,000 inches of water and they have 200,000 acres drainage into this basin—the deep underflow—and we believe, without any question, at least 5,000 or possibly more—probably 10,000 inches of water, could be pumped from those gravels. As a matter of fact, most of it is artesian.

I wish to call your attention to the fact that the engineer formerly in charge of the Reclamation Service in southern California, Mr. J. B. Lippincott, in a public address before the Shakespeare Club in the city of Pasadena, January 13, 1910, made this statement:

"Until the whole matter was in right control, no search was made for artesian wells."

Now, the proof as I have it here—and I would like to submit it, if time permitted—is the fact that not only Mr. Lippincott, the engineer in charge, was collaborating with those men who are seeking to accomplish this thing, but Mr. Lippincott, in company with Mr. Fred Eaton went over the land and Mr. Eaton purchased this land within the Long Valley Reservoir and Tinemaha Reservoir, actually purchased the patented land, for the purpose, as we believe, of preventing the carrying out of the Owens River reclamation project. Mr. Frederick Haynes Newell, addressed a letter to the city board long before the passage of the act, in which he told the city that the Owens River reclamation project was being held up in their interests. Congressman Slyvester C. Smith, in December, 1905, went to the Interior Department, and to the Reclamation Service, and at both offices, he was assured that there was no purpose on the part of the Interior Department or the Reclamation Service, to abandon the Owens River reclamation project, but they were going to continue their investigations.

Mr. Mulholland, in his statement, in the first Los Angeles aqueduct report, says that the Reclamation Service stopped the work in the Owens River Valley in January, 1906, within 30 days of the time that Congressman Smith was before that department. I would like to introduce those facts in connection with this hearing.

The CHAIRMAN. It is so ordered.

Mr. DIXON. And we believe, on the presentation of the case that you will come to the conclusion, which we have come to, that the Owens River reclamation project was an absolutely fraudulent one from its inception; that when Mr. J. B. Lippincott, with Mr. R. S. Hawley and Mr. Clauson went into the Owens River for the purpose of establishing the Owens River reclamation project that there was no intent on the part of that service to establish the Owens River reclamation project.

And so, after we had agreed to stand aside with our reclamation projects; after we had signed petitions submitted by their own men that we would stand aside—and over 90 per cent of the citizens there signed those petitions—and after we had tendered everything, after having filed upon the Fish Slough Reservoir in connection with this project and through Senator Newlands, of Nevada, had presented our application, we also tendered the Fish Slough project, and I wish to call your attention, gentlemen, to the fact that the Reclamation Service, of which I have the record here, which I wish to enter into the record of the proceedings, said that the Fish Slough project was withdrawn for investigation as a distinct project by itself:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1906.

REGISTER AND RECEIVER,
Independence, Calif.

SIRS: By letter of August 17, 1906, you transmitted map and field notes of survey in duplicate, together with other papers filed by William Rowan as an application under the act of March 3, 1891 (26 Stat., 1095, and the act of May 11, 1898 (30 Stat., 404), for right of way for the Fish Slough Reservoir in townships 5 and 6 south, ranges 32 and 33 east, M. D. M.

By office letter "F," of October 10, 1906, a copy of the map was sent to the director of the United States Geological Survey for a report thereon as to whether the allowance of the application would interfere with any project of the Government under the Reclamation Service.

The acting director of the survey, under date of October 26, 1906, returned the map and reports "the application covers what is known as the Fish Slough Reservoir project under the reclamation act which is now under consideration by the Secretary of the Interior," and recommended that action on this application be suspended until the question now under consideration by the Secretary of the Interior be determined.

This office concurs in the recommendation made by the acting director of the survey and the application will accordingly be temporarily suspended pending a further report from the Director of the Geological Survey. A copy of this letter is herewith inclosed to be forwarded to the applicant.

Very respectfully,

W. A. RICHARDS,
Commissioner.

Mr. Leon H. Taylor of the Carson project, was sent down into our valley to investigate and report on that project, and reported favorably. He said that this project could be built and that 100,000 acres could be reclaimed through the Fish Slough project at a cost not to exceed $7 per acre, where the cost on every other project had run from $15 to $50.

Now, I would like, gentlemen, to know—I have no means of finding out—if the department ever reported to Congress as to that Fish Slough project, as they are required under the laws. We would like to know, under the Owens River project, what reports were made to Congress. We would like to know if the statements

made to me by Mr. J. C. Clauson, to the effect that when he was making this investigation in the Owens River Valley that Mr. J. B. Lippincott suppressed the records of that service in his office for nine months, and that he sent those reports in to the department over his head; and we would like to know, gentlemen, if the statement made to me as a public official—as the register of the United States Land Office—officially made by Mr. J. C. Clauson, acting in behalf of the Reclamation Service, that at the time Mr. Fred Eaton and Mr. J. B. Lippincott came over from the Yosemite Valley, that Mr. Clauson was instructed to take the pack train of the Reclamation Service and go over into Yosemite and bring Mr. Fred Eaton and Mr. Lippincott together over into Long Valley, and then to return them to Yosemite and then charge up the expense to the Reclamation Service, and that Mr. Clauson refused to do it and they had a row about it—we would like to know about that.

We came to this city and asked for certain records and asked to see the applications of the city covering the lands on which they had filed, and on putting it up to the department, after several days of investigation and repeated efforts on our part, those maps can not be procured or have not been procured. They say they can not find them. I pause to explain that the General Land Office has been moved and some of the voluminous files pertaining to the applications of Los Angeles have apparently been misplaced. I do not mean that the Land Office officials were unwilling to let us see them. They have been very courteous. We would like to present them to you so you can get a comprehensive view of the situation, so you might visualize what is being done and what is being sought in this legislation.

Now, we claim that these bottom lands, which were applied for as an underground reservoir—and we admit that they are suitable for such purpose—that many of them are admirably adapted for that purpose, although, as a matter of fact, the greater portion of the wells that have been sunk have been sunk on other lands, largely bought from private individuals, and, as I say, averaging about one or possibly two wells to the township, and, as a matter of fact, this underground reservoir, which the act of 1906 said specifically "shall be used for the purpose for which it was applied for" or shall revert to the United States—we ask that it be used for that purpose and not simply to pump 2,000 inches from these 25 wells, when, as a matter of fact, they represent that they are going to develop 200 or 300 wells. It is possible to pump 5,000 inches, or possibly 10,000 inches, out of that reservoir without in any way diminishing the supply of water for the city or in any way interfering with their power development. We simply ask that Congress say to them: "Use it for the purposes for which you applied for it; if not, turn it back to the United States Government and let Uncle Sam step in there and use it for that purpose."

The CHAIRMAN. Mr. Dixon, I wish you would endeavor to get through as quickly as possible. I simply can not give any more time to this matter. I am, at the present time, holding up appropriation bills.

Mr. DIXON. Well, Mr. Chairman, I can finish now, with the insertion of my prepared statement and exhibits. There may be some

questions arising on this matter that you may wish to ask about, and I would like to have a few minutes—probably not more than five—to explain some particular points that may arise.

Mr. MATHEWS. We wish, Mr. Chairman, to put into the record a copy of the act of June 30, 1906. It is found at page 14 of the hearings before the Committee on Public Lands of the House of Representatives, in reference to this particular bill.

The CHAIRMAN. We have a copy of those hearings, and it is not desirable to reprint any more than we have to. We can read those hearings.

Mr. MATHEWS. I would also call your attention to the fact that in the same volume of hearings are copies of letters from the Department of Agriculture and the Department of the Interior in reference to this particular bill approving the bill.

The CHAIRMAN. We have those before our committee.

Mr. MATHEWS. I wish also to call your attention to these matters in the same record. This bill excludes from its operations the so-called Bishop Creek and its tributaries in Inyo County and the Fish Slough Reservoir and the territory north of Owens Valley; that is, the Mono Drainage Basin.

When the act of 1906 was under consideration the power companies having their interests on Bishop Creek, which were the same interests that are now here, said they would withdraw opposition to the bill if we would exclude from its operation Bishop Creek and its tributaries. It was agreed to, and Bishop Creek and its tributaries were excluded and the act was passed in that form. When we came to Congress for an extension of time it appeared that in the meanwhile the power companies had extended their operations to the Mono regions. The department recommended that, in addition to the exclusions above mentioned, the Mono Basin be excluded, and it was excluded and the bill presented here contains such exclusion. They also asked that the Fish Slough Reservoir be excluded, and it was excluded.

Now, I should like to say, in connection with the act of 1906, wherein the power companies were left undisturbed on Bishop Creek, that I would like to call your attention to the telegram sent by former Senator Flint, of California, who was in charge of the bill in 1906 in the Senate. In the first place, I will read the telegram sent by Mr. Mulholland, who is here in person, because Senator Flint's telegram refers to Mr. Mulholland's telegram. This telegram is dated:

LOS ANGELES, CALIF., *October 29, 1919.*

Hon. H. Z. OSBORNE,
House of Representatives, Washington, D. C.:

I was present at the hearing before the committee of Congress considering the aqueduct right-of-way bill in 1906. Potter, representing power companies owning power plants of Bishop Creek, objected to the bill, which was amended so as to give Los Angeles no rights in Bishop Creek. Companies were satisfied and withdrew objections to bill. As bill now pending before Congress excluded Bishop Creek and Mono Basin from rights given city, their dealing and good faith demands that companies drop opposition to its passage. Large manufacturing plants recently established here have created a demand for electric power, which passage of pending bill would permit city to develop; therefore urge early passage of the pending bill in its present form.

WM. L. MULHOLLAND.

Now, former United States Senator Flint wired to Representative Osborne in reference to the same matter as follows:

LOS ANGELES, CALIF., *October 29, 1919.*

Hon. H. Z. OSBORNE,
House of Representatives, Washington, D. C.:

I have read Mr. Mulholland's telegram addressed to you of this date in reference to aqueduct right-of-way bill. Mr. Mulholland's telegram sets forth the agreement reached at the time of the hearing on the original bill, and in my opinion any opposition to the passage of this bill by the power companies on Bishop Creek would be an act of bad faith. I have no hesitancy in stating in my opinion the public interest demands the immediate passage of the aqueduct right-of-way bill now pending before Congress.

FRANK P. FLINT.

A similar wire, which I will not read, contained on page 193 of the same House record, which was sent by Congressman James McLachlan, who was a Representative in the House from the Los Angeles district and who participated in the proceedings of 1906, sets forth that he was present when the hearings were held and the arrangements were made whereby the power companies agreed that if the Bishop Creek and tributaries were excluded they would have no opposition to the bill.

Now, as to the last amendment, in regard to requiring us, as a condition in the bill, to develop and pump water from this underground storage, we object to that on its merits, because it is a provision in reference to how we shall handle our water rights. We can not take the time to show that that is a body of waste land in which the water gathers, which water has entered the valley at points above and sinks down and accumulates there, and is desired by the city for use in emergencies, as an emergency supply in years of extreme shortage, such as are now occurring—last year and this year being years of short rainfall, producing a short supply of water.

The city is now vigorously pumping and developing water from this source to supplement the supply it is getting from the streams. We are administering it, we think, in the public interests, and we would not be agreeable to having Congress put into the bill anything determining how we should use it, because presumably we are using it in the public interests, and it does not seem fair that we should be compelled to resort to that rather than any other system simply because, in order to get the bill passed, we must agree to it.

Mr. RAKER. May I have just a couple of minutes to ask Mr. Mathews a few questions for the purpose of adjusting this matter?

The CHAIRMAN. Yes.

Mr. RAKER. There is no storage reservoir at Fish Slough now?

Mr. MATHEWS. No.

Mr. RAKER. The flood waters are going and coming as usual?

Mr. MATHEWS. Yes, sir.

Mr. RAKER. There is no storage in effect at Long Valley?

Mr. MATHEWS. There is no storage now, but the work is in progress there.

Mr. RAKER. The storage in either one of these places will hold back the flood waters that would otherwise go down Owens River or go into the aqueduct or Owens Lake?

Mr. MATHEWS. Yes; it would.

Mr. RAKER. Now, the purpose of the Long Valley reservoir is to store this flood water to equalize the flow?

Mr. MATHEWS. Yes; it is a storage reservoir situated right on the river.

Mr. RAKER. And in addition to storage for that purpose you could utilize it to some extent for power purposes?

Mr. MATHEWS. Provided we get the consent of the irrigators below, which we intend to get.

Mr. RAKER. The same effect would obtain in the Fish Slough proposition?

Mr. MATHEWS. Fish Slough is situated about a mile and a half——

Mr. RAKER. But no power development could be secured from Fish Slough?

Mr. MATHEWS. No.

Mr. RAKER. Well, that ends that. Now, if the city of Los Angeles permitted a sufficient amount of water to flow down the river during ordinary seasons, when it is not flood times, to supply the irrigators, nobody would be injured?

Mr. MATHEWS. We do that.

Mr. RAKER. I do not care what you do, but if that was done and could be done, nobody would be injured? You would be protected and the irrigationists would be protected?

Mr. MATHEWS. That depends on what you mean. In wintertime the stream is low and the water does run low, and we take it all and need it all. In the summer time, which is the irrigation season, we do let the water run down. We have to let it run down because they have a prior right. We can not store that water without their agreeing to it.

Mr. RAKER. That being the fect, it must be at some time when there is a flood water there and you would store in the Long Valley Reservoir?

Mr. MATHEWS. Yes.

Mr. RAKER. So, the time you do not need it, in the winter, when it is coming down in smaller quantities in your aqueduct—at the time when the irrigationists do not need it, or in the summer time, when there is a surplus which is not needed by the irrigationists or yourself—that is the only time you can use it?

Mr. MATHEWS. Yes, sir; if we have an agreement.

Mr. RAKER. Now, if the surplus water, after it leaves your reservoir should be picked up and put in the Fish Slough, it would not do any injury?

Mr. MATHEWS. Yes.

Mr. RAKER. Why, if the same amount was permitted to flow out of the reservoir, so as to keep an average flow, so as not to affect your interests, how would you be injured?

Mr. MATHEWS. But the fact is that every time you store that water in that territory, which is very dry territory, the loss by evaporation is tremendous.

Mr. RAKER. If the flood water was stored, and the flood water after a certain amount had been permitted to flow out of the slough, that would be permitted to flow down the river—flow down the river in the same amount as if there was no Fish Slough there—that would not affect your rights, nor would it interfere with the irrigationists, would it?

Mr. MATHEWS. Our intake is below——

Mr. RAKER. That is the reason I am putting it that way. If the same quantity of water was permitted to flow out of Fish Slough as would be obtained if Fish Slough were not there, and flow down the river, it would not interfere with the amount of water going into your aqueduct?

Mr. MATHEWS. But no tributary runs through it.

Mr. RAKER. If the water was diverted into Fish Slough and the same amount of water permitted to flow out of Fish Slough as if it were not there, down to the aqueduct, it would not affect you people?

Mr. MATHEWS. It would, because when you store it the loss from evaporation varies from 4 to 6 feet annually on the water surfaces. Every time you store that water you undergo such an immense loss that it is impossible to predicate the proposition on the basis that you would turn out as much as you turned in. You would lose a tremendous amount. There is no possibility of avoiding that loss, which is tremendous, because that is a very dry country.

The CHAIRMAN. That is what I had in mind when I thought it was very unwise to have two storage projects. Do you think you will require much more time?

Mr. MATHEWS. I am perfectly willing to stop now if the chairman desires; but there is one point that I had in mind, with reference particularly to Judge Dixon's statement in regard to the situation of his company, which we do not expect in any way to hurt or want to hurt. His company is supplying with electricity a territory entirely apart and different from ours. It is located in a territory which in its larger uses is supplied by another company, which company was established before this particular company went in there. The territory served is the counties of Riverside and San Bernardino, which is supplied by the largest electrical company in the United States, the Southern California Edison Co. Both of those companies are in that territory.

Mr. DIXON. We supply San Bernardino and in part Redlands. I say in part.

Mr. MATHEWS. They have a surplus supply of power which they are able to use in California so far as required there and some, I believe, is distributed in Mexico, at Mexicali, and also some in Nevada.

Mr. DIXON. We do not distribute any in Mexico. We supply that territory around Calexico.

Mr. MATHEWS. But you have a surplus supply and we are not sorry that you have a surplus.

Mr. DIXON. We have been required by the California Railroad Commission to tie up with other power companies in order to take care of the shortage of power supply.

Mr. RAKER. But getting back to the irrigation project——

Mr. OSBORNE. Mr. Chairman, I am very much interested in this bill. I am, ostensibly at least, the author of it. I want to know if there is any objection to my occupying as much time of the committee as my distinguished confrère, Judge Raker, has occupied in the lucid explanations of various questions that have come up. I have said not a word, although it is my bill, and the Judge has given us some very valuable and interesting statements——

The CHAIRMAN. Let us not take any time about that. If there is any time left, we will be very glad to hear from you.

Mr. RAKER. I think the chairman understands my position. Part of this territory was in my district, and it is my wish to see both parties to this matter protected. I feel it my duty, as a Representative from California, to assist in getting this legislation passed. This bill excludes Fish Slough. So, the irrigationists can go ahead and put in their dam?

Mr. MATHEWS. So far as we are concerned; yes, sir.

Mr. RAKER. You are absolutely out and there is no reason why they can not go ahead and put in their dam and exclude the whole system?

Mr. MATHEWS. But when you come to the water rights——

Mr. RAKER. I do not want to ask you about the water rights.

Mr. MATHEWS. But I do not propose to submit here that you can propound——

Mr. RAKER. But there is no question under this bill that Fish Slough and its territory are excluded?

Mr. MATHEWS. Absolutely.

Mr. RAKER. And that would permit, so far as the physical structure of reservoirs and canals is concerned, these irrigationists proceeding?

Mr. MATHEWS. Yes, sir. They own——

Mr. RAKER. Under this legislation you would be permitted to go ahead and construct a reservoir at Long Valley?

Mr. MATHEWS. We could do that anyway. These other matters will be adjusted satisfactorily, because it is to the interests of the city and the interests of the city require that they be adjusted.

The CHAIRMAN. How much time will you require, Mr. Osborne?

Mr. OSBORNE. I will not take up any time of the committee.

The CHAIRMAN. Proceed, Mr. Dixon.

STATEMENT OF MR. JOHN R. DIXON IN REPLY TO THE CITY'S OBJECTION TO AMENDMENT NO. 2 SUGGESTED BY SOUTHERN SIERRAS POWER CO.

Mr. DIXON. Mr. Chairman, we have shown you by the records that the Long Valley Reservoir site was acquired by the city for the express purpose of storage to supply the aqueduct with water for domestic and irrigation uses during the low water flow of Owens River and was not acquired for power purposes, except as power might incidentally be developed along the aqueduct, as by section 1 of the act of June 30, 1906, power developments were limited to the territory along the aqueduct from its intake, which is more than 40 miles below Owens Gorge.

Replying to the explanation by the city's representative that a protest against the purchase of the Owens Gorge, or so-called channel lands, had been made and heard by the department and decided favorably to the city, we reply that such a decision means nothing whatever, as under section 4 of the act of June 30, 1906, the department was bound to overrule any protest and was bound to allow the city to patent such lands, provided the city's application was regular on its face. Whether the city's purchase was fraudulent depends entirely on whether its representations accorded with the requirements of section 4 of the act of June 4, 1906, and whether they were

true—a matter depending in part upon subsequent events and which the department was vested with no authority by said section 4 to inquire into or determine. The department had only the power to see whether the lands applied for by the city included valid entries, and if they did not to approve the city's plat and accept the purchase price required by said section 4, a fact which the city was well aware of. To show this we now quote from the Secretary's decision rendered January 6, 1912, which the city has invoked:

> Upon behalf of the city it is contended that the question of the necessity should be left to the opinion of the city authorities, acting under the said law of Congress, and that as engineers of the city, experts in these matters, have declared these lands necessary for the proper development of the project, the department should accept their view.

The public utilities here appearing charge that on the record made before you the title to the Owens River Gorge or Channel lands, so called, was fraudulently obtained in violation of the letter as well as the spirit of section 4 of the act of June 30, 1906, in that said lands were not necessary for storage or right of way purposes and were purchased with the design not to use said lands for such purposes, and for which purposes the city has never used them, but to prevent citizens from entering said lands and to prevent anyone from applying for permits to use same under the power act of 1901, and that the alleged title was obtained by the city solely to thus obstruct the operation of the laws of the United States.

The object of amendment No. 2, suggested by the Southern Sierras Power Co., is to prevent a virtual ratification by Congress of the fraud by granting rights of way over such illegally acquired territory. The facts did not become known until after the hearing of this bill in the House; and this is the first opportunity to bring attention to the fraud, as proceedings to set aside Federal patents must be initiated under the orders of the Attorney General of the United States.

The passage of this bill without amendment 2, suggested by the Southern Sierras Power Co., will enable the city to take advantage of its wrongful conduct and render any proceedings the Attorney General may order fruitless and of no avail; because if this bill is enacted as it now stands, it will enable the city to acquire rights of way over the lands fraudulently acquired, even though it be found that its acquisition of patent title thereto was fraudulent.

We submit that the city should be made to stand on the title it insisted in buying to defeat the operation of the general land laws of the United States.

The plea of payment is no excuse for the illegal purchase, but intensifies the fraud, as less than $11,000 was paid for these gorge lands—worth many, many times that amount—lands which under the fraudulent title, ostensibly acquired for another purpose, can not lawfully be used for power development.

One of the objects hidden in the bill now stands out unmasked, and that object is to escape the consequences of the fraud committed in violation of the act of June 30, 1906, against which the suggested amendment No. 2 is directed. Whilst the personnel may change, Congress is a continuing body which we believe will go on and uphold the dignity of its laws forever. To that end the Owens Gorge

or so-called channel lands purchased by the city in violation of those laws should be restored to the public domain, where they belong, to be controlled by the general power act of Congress.

Mr. Chairman, my attention has been called to the fact that, while I delivered to the clerk of the committee three amendments, I failed to read the third one and I ask permission to read it now without comment, as it contains only five lines.

The CHAIRMAN. There is no objection to that.

Mr. DIXON. On page 5, in line 5, after the word "city" insert:

or shall find that the granting of such easement or permit will subserve the public interests as well as said works proposed to be constructed by the city.

That is No. 3. Now, as to Senator Flint's telegram—and I am well within my time, Mr. Chairman—I am glad that was brought up. It was brought up in the House. In 1904, the Nevada-California Power Co. had completed a power plant on Bishop Creek—two years before the act of 1906. It was operating on that creek before the Los Angeles Aqueduct was ever heard of. It did appear before Congress and ask that that creek be excluded and that is all that was asked and that is all that was excepted in the act of 1906. Now, what occurred? The act of 1906 was passed. The city had made preliminary surveys to ascertain the feasibility of the aqueduct project before the bill was passed. There is no one, I imagine, who believes for a moment that this thing was not thoroughly investigated to determine the feasibility of the plan before any movement was started to get it put into effect. The city was given a year in which to file plats. It took the year. There was no objection to that. It was given two years to amend those plats. It took the two years. There was no objection to that. It was given three years to purchase, provided they purchased lawfully, under section 4, to which there was no objection. All of these years, the Southern Sierras Power Co. was not in existence or at least not doing any business and it was after the Los Angeles people had acquired all they asked for, all they had platted and all they intended to purchase, that the Southern Sierras Power Co. came in and asked for the leavings, and out of the leavings was built up this great public utility in southern California, which is a most potent factor and has been, for eight years in the development of the great territory described to you and it is those leavings that we are here to-day insisting on protecting.

Mr. MATHEWS. How many plants have you on Bishop Creek?

Mr. DIXON. Five.

Mr. MATHEWS. Is not the Southern Sierras Power Co. identical in interest with the Nevada-California Power Co.?

Mr. DIXON. It is an allied company. There is no question about that.

Mr. MATHEWS. Yesterday there was reference made to the fact that the patent lands in the Owens River territory were not obtained without protest on the part of the power company.

Mr. DIXON. I read the protest of the city against the Mono Power Co.

Mr. MATHEWS. Did not your company, the Southern Sierras or the Nevada-California Power Co., take over the interests of the Silver Lake Power Co.?

Mr. DIXON. We did. I am not sure about that, Mr. Mathews, but I think that is true.

Mr. MATHEWS. You are attorney for the Silver Lake Power Co.?

Mr. DIXON. I was, but not in any controversy before the Land Department.

Mr. MATHEWS. I wish to put into the record the decision of the Secretary of the Interior upon the application covering the gorge lands, which refers to the opposition of certain power companies.

We also wish to put into the record a motion for a rehearing by the Silver Lake Power & Irrigation Co. in that case, in which it appears that Messrs. Consaul and Heltman were attorneys for the power company in that proceeding.

I wish to put in copy of a paper submitted by those gentlemen entitled "Motion for rehearing" in that proceeding which is entitled "Hearing before the Secretary of the Interior, Silver Lake Power & Irrigation Co. *v.* The City of Los Angeles, Calif., Independence, 0145."

In that connection I wish to submit a letter dated February 26, 1912, from Hon. Samuel Adams, First Assistant Secretary of the Interior, addressed to Messrs. Consaul & Heltman, of this city, advising them of the denial of their motion for a rehearing.

Mr. DIXON. In answer to that, Mr. Chairman, I wish to impress upon this committee that we have no objection to these records. The question is why is amendment No. 2 objected to? I pointed out to you it does not make any difference what the department has done or what its agents have done or what protests have been made. The fraud exists, and we have made a record to show it. I have tried to make it clear that there was no discretion on the part of the department to either grant or overrule anything; that it was obliged by direction of Congress to sell those gorge lands to the city of Los Angeles under section 4, provided the city intended, or said it intended, to use them for storage or right-of-way purposes, to take the water down to the aqueduct, and the evidence produced here shows conclusively the city had no such intent when it made the purchase nor has it ever used the land for such purposes, nor are they susceptible of any such use.

(The papers submitted by Mr. Mathews are here printed in full, as follows:)

JANUARY 6, 1912.

FARMERS' DITCH CO. ET AL. *v.* CITY OF LOS ANGELES—"F" INDEPENDENCE 0145, 0602, 0605. REJECTION OF APPLICATION OF CITY TO PURCHASE LANDS. REVERSED.

APPEAL FROM THE GENERAL LAND OFFICE.

The act of Congress approved June 30, 1906 (34 Stat., 801–803), granted to the city of Los Angeles, Calif., rights of way over and through the public lands and forest reserves in the Counties of Inyo, Kern, and Los Angeles, in said State, for the purpose of constructing, operating, and maintaining canals, ditches, pipes, pipe lines, flumes, tunnels, and conduits for conveying water to the city of Los Angeles, for the purpose of constructing and maintaining power and electric plants, poles, and lines for the generation and distribution of electric energy, together with such lands as the Secretary of the Interior may deem to be actually necessary for power houses, diverting and storage dams and reservoirs and necessary buildings and structures to be used in connection with the construction, operation, and maintenance of said water power and electric plants under certain conditions therein stated. A number

of applications under said provisions of the act have been approved. The said act further provides, in section 4, among other things, as follows:

"* * * That in the event that the Secretary of the Interior shall abandon the project known as the Owens River project for the irrigation of lands in Inyo County, Calif., under the act of June 17, 1902, the city of Los Angeles, in said State, is to pay to the Secretary of the Interior, for the account of the reclamation fund established by said act, the amount expended for preliminary surveys, examinations, and river measurements, not exceeding $14,000, and in consideration of said payment the said city of Los Angeles is to have the benefit of the use of the maps and field notes resulting from said surveys, examinations, and river measurements, and the preference right to acquire at any time within three years from the approval of this act any lands now reserved by the United States under the terms of said reclamation act in connection with said project, necessary for storage or right of way purposes, upon filing with the register and receiver of the land office in the land district where any such lands sought to be acquired are situated a map showing the lands desired to be acquired, and upon the approval of the said map or maps by the Secretary of the Interior, and upon the payment of $1.25 per acre to the receiver of said land office, title to said land so reserved and filed on shall vest in said city of Los Angeles, and such title shall be and remain in said city only for the purposes aforesaid, and shall revert to the United States in the event of the abandonment thereof for the purposes aforesaid: *Provided, however*, That the terms of this act shall not apply to any lands upon Bishop Creek or its branches in said county of Inyo."

The said Owens River project mentioned in the act was abandoned by the Government on July 12, 1907, and the city paid the amount of $14,000 named in the act for the maps and field notes therein mentioned, and within the time required filed, under the last-quoted provision of the act, four applications as follows:

No. 0954, embracing lands for the proposed Long Valley Reservoir, for the purpose of storage and regulation;

No. 0145, for lands along the channel of the Owens River from the Long Valley Reservoir to the point of intake of the aqueduct for right of way purposes;

No. 0602, for lands for the proposed Tinemaha Reservoir for the purpose of storage and regulation, and

No. 0603, for bottom lands in the Owens River Valley for the purpose of underground water storage.

The Commissioner of the General Land Office, by his decision of May 5, 1911, allowed the first-mentioned application for the Long Valley Reservoir, and that application has since been approved by the department, so that no further consideration of same will be given in this decision. The commissioner rejected the three other applications for the reason that he did not deem the lands applied for necessary for the purposes specified in the act. The city has appealed to the department from that action.

It appears that the city is constructing an aqueduct system for the purpose of a water supply of about 20,000 miners inches or 400 second-feet. This quantity of water is equivalent to 258,500,000 gallons per day, and would be a sufficient supply for more than 2,000,000 people. The question involved at the hearing was whether this amount can reasonably be said to be more than is necessary for the future needs of the city.

The city has issued bonds for the purpose of constructing this great water-supply system to the amount of $24,500,000. The aqueduct will bring water from a distance of about 240 miles, and the system consists of a number of large reservoirs, a large body of land for underground storage, from which water is to be pumped from artesian wells in case successive periods of drouth should cut short the surface supply. In one place the Coast Range Mountains are to be tunneled for a distance of over 27,000 feet.

A number of protests were filed against the applications of the city on behalf of the people and public interests of Owens Valley, and by certain companies, corporations, and individuals claiming adverse interests. A hearing was had upon said protests and testimony, exceeding 550 pages, was introduced. The protestants introduced no evidence whatever at the hearing. They rested upon the testimony given by the witnesses for the city after very thorough cross-examination. A few of the protestants had claims to certain tracts in conflict with the city's applications. And, as to these, the city eliminated from its application all tracts claimed adversely, and thus removed all ground

for objection based upon any claim of interest or ownership in or to any of the tracts now applied for. The other protestants, in the main, rest upon general objections to what is claimed will result in indirect injury to the individuals, water-supply companies and corporations, and to the community of Owens Valley by the taking of such a great volume of water from that region and by withdrawing so large an acreage of land from agricultural development. In behalf of Inyo County it was strongly urged that its system of public roads would be seriously interfered with. All questions as to the policy or wisdom of the provisions of law under which these applications were made were matters for Congress, within its discretion, to decide. The direct or indirect effects of the grant by Congress can not be considered here. But it is urged the applications exceed the terms of the grant in that the lands applied for, or some of them, are not "necessary for storage or right-of-way purposes" within the meaning of the said statutory grant. This is the point of law mainly relied upon by the protestants, and the commissioner in his decision rejecting the three applications held that the lands embraced therein were not necessary for the development of the city's project.

Upon behalf of the city, it is contended that the question of the necessity should be left to the opinion of the city authorities, acting under the said law of Congress, and that as engineers of the city, experts in these matters, have declared these lands necessary for the proper development of the project, the department should accept their view.

Great deference is to be accorded the plans and opinions of the engineers and experts who have in charge this vast project, and the nature and purpose of this grant demand its broad and liberal interpretation. It is not to be supposed that Congress had in view only the actual present needs of the city of Los Angeles. When a city is investing millions of dollars for a water system, it would be a very short-sighted policy to fail to provide for the possible needs of the increasing population for many years in the future. This is especially true of a city which has had such a remarkable growth as Los Angeles has experienced amounting to more than 200 per cent in the last 10 years. Furthermore, section 6 of the act recognizes the right of the city to sell water to municipalities, corporations, or individuals.

The Long Valley Reservoir, application for which has already been approved by the department, aside from the needs of the city, will be a positive benefit to the water users and residents below that point because it will gather and hold back the flood waters of the river, thus preventing serious damage from that source during the periods of excess flow; and, furthermore, it will provide for a steady, uniform, and constant flow during the dry season. It can not affect adversely the water rights of anyone entitled to water below that point in the Owens Valley.

The next artificial reservoir contemplated in the project is the Tinemaha, which is about 50 miles below the Long Valley Reservoir and about 6 miles above the intake of the aqueduct. The application for lands for this reservoir embraces about 4,240 acres. The city already owns about 3,320 acres in this site and there are about 1,080 acres in private ownership. The testimony shows that between these two reservoirs are numbers of irrigating ditches in private ownership controlling water rights. The city will be required at all times to allow sufficient water to pass the Long Valley Reservoir to satisfy these water rights, unless they should be acquired by the city. A great deal of water is thus diverted for irrigation, but much of it ultimately finds its way back into the river, and this would be caught in the Tinemaha Reservoir. Also there are numbers of streams between the two reservoirs and their waters, especially during the nonirrigating season, would be gathered in the latter reservoir. Concerning this reservoir, the engineer in charge of the project, Mr. Mulholland, a man of long experience in such matters, testified, in part:

"I think Tinemaha would be a very useful link in the city's project without in any way interfering with the water users of the valley."

Concerning the same reservoir, the witness, Charles H. Lee, who had prior to the hearing in the local land office devoted 18 months to an investigation of the hydrology of Owens River Valley, stated:

"In addition to its function as an annual regulator, the reservoir acts as a temporary storage for the flow of the river in excess of 800 second-feet, the capacity of the head of the aqueduct. This is in the nature of a monthly or even daily regulator, and for that purpose the reservoir is extremely valuable."

* * * * * * *

"Long Valley Reservoir is not large enough to hold the flood waters or all the flood waters; if Tinemaha Reservoir was not there, they would be lost to every one."

The fact that the city has already purchased within this site about three-fourths as much acreage from private parties as it is now applying to purchase from the Government, and that there still remains about one-fourth as much in private ownership which the city will have to purchase in order to use this area as a reservoir, furnishes the very strongest proof of the good faith and intention of the city to so use it, and that in the opinion of its engineers it is necessary in the development of the project. In case the city should ultimately find this site unnecessary for the purpose, there is a provision in the law by which the title will revert to the Government in the event of the abandonment of the land for the purposes expressed in the act. The application for the Tinemaha lands, serial 0602, is therefore allowed.

Application No. 0603, for the so-called bottom lands, embraces, since the eliminations which have been made, about 12,300 acres, consisting of parcels along the river bottom from Owens Lake to the vicinity of the Tinemaha Reservoir site. The object of acquiring title to these lands is for the purpose of sinking artesian wells and pumping water therefrom in case of failure of the surface flow on account of damage to the reservoirs, or because of excessive droughts which may occur. By direction of the department, these lands were investigated by an official of the Geological Survey. W. C. Mendenhall, geologist in charge of the underground water investigations of the survey, made the investigation and, under date of February 3, 1910, he reported thereon, in part, as follows:

"* * * This is an application for permission to purchase about 25,200 acres of bottom lands within the Owens Valley, Calif., distributed along the valley from about 10 miles north of the village of Big Pine, southward to Owens Lake. Lands covered by this application are either marshlands, grasslands, or desert lands devoid of vegetation, or sparsely covered by shrubs of the usual desert types. In its application the city states that the lands are desired for "water-storage purposes in connection with the Los Angeles aqueduct," although it is clear that it is not intended to use the lands for the construction of reservoirs or dams or other storage works of usual types. On this account some discussion of the principles upon which the application is based is desirable before specific recommendations are made as to particular subdivisions of the lands involved.

"Many thousands of acres of land within the Owens Valley contiguous to, and in some cases inclosing, lands involved in the application are now owned by the city of Los Angeles, having been purchased by the city from individual or corporate owners. These purchases were made, so the representatives of the city assert, because the municipality desired to develop and withdraw for its use a portion of the large quantity of subsurface water which, it is maintained, saturates these lands. The lands which the city desires to purchase from the Government are precisely identical in character with much of the land now owned by the city and are desired for exactly the same purposes, namely, in order that underground waters lying beneath the surface may be withdrawn by means of flowing or pumped wells to augment the surface supply which the city has secured in the Owens Valley. The term 'water storage,' therefore, as it appears in the city's application, means natural storage in the interstices of sands and gravels beneath the land surface, and not storage in the usual way by the construction of dams or by the diversion of water to natural depressions where it would be retained upon the surface of the land; and the city in its application to purchase desires that the phrase 'necessary for storage * * * purposes,' as it appears in section 4 of the act approved June 30, 1906, shall be so construed as to permit it to acquire from the Government lands beneath whose surface underground waters are stored.

"I find that the city in the development of its project thus far has installed a number of deep wells on lands already acquired by it through private purchase, the majority of these wells yielding artesian flows of 1 or 2 second-feet of water each, and all being capable of much greater yields when equipped with pumps. The plans of the city involve the installation of many wells of this type along the line of the aqueduct where that line extends through the Owens Valley and the development of a considerable proportion of the water supply of the city from these wells. The wells already installed prove the contention of the city that certain of the lands within the valley do contain large quantities of underground waters, and that these waters are capable of economical extraction, and so may properly be used as an important element in the city's Owens

Valley supply. It is upon this demonstration that the city contends that the phrase 'for storage purposes' may, with entire propriety, be interpreted to include all water-bearing lands within the valley.

"The chief engineer of the Los Angeles Aqueduct and others associated with him in the aqueduct construction have had much experience in the development of water supplies in that portion of California which is tributary to Los Angeles, and this experience has taught them that very extensive and valuable supplies of water may often be secured under the right kind of conditions from subterranean sources. So extensive has this development been in the past in southern California that it was estimated in 1904 that in certain portions of the southern part of the State the ratio of underground water to surface water used for irrigation during the late summer period after dry winters when the surface water supply is low and the pumps are busiest is as high as 3 or 4 to 1. These large quantities of underground waters are derived from saturated sands and gravels beneath the surface, which are in reality most effective storage reservoirs. It is in the sense in which such water-bearing lands are used for storage that the city wishes to have the phrase 'storage purposes' interpreted, and to be permitted upon the basis of this interpretation to purchase the lands applied for.

"The exerience of the Geological Survey teaches us that such an interpretation has an entirely adequate and proper basis in fact, that many valley lands in parts of the arid West do receive surface waters in the form of rain or melting snow or stream discharge, that the waters sink and are stored in the interstices that exist between the grains of sand or gravel that constitute the valley fill, and that by proper engineering developments they may be withdrawn just as waters stored in surface reservoirs of the usual type may be withdrawn for any purpose for which they may be desired. Furthermore, it is my earnest conviction that among lands of this type and adapted to this purpose there are few, if any in the United States, that are superior to certain of those in the Owens Valley. The principle upon which the city makes its application being accepted therefore, it remains to consider the individual subdivisions of the lands in question in order to determine whether they are actually adapted to the purposes claimed by the city and are necessary to the city in carrying out its plans for the acquisition of an adequate supply for its future needs.

"In order to determine this question, and, if possible, to reach an agreement that would be just both to the people as represented by the Department of the Interior and to the city, I accompanied Mr. William Mulholland, chief engineer of the Los Angeles Aqueduct, in the early part of January, 1910, over the lands covered by application No. 0603, and as a result of our joint examination and discussion, Mr. Mulholland decided to amend the city's application in such fashion as to reduce the acreage originally applied for from 25.200 to 14,760, the 10,440 acres eliminated being lands which, in my opinion, acceded to by Mr. Mulholland, either do not fall within the definition of lands adapted to storage purposes or, although suitable for such purposes, are not necessary to the adequate completion of the city's enterprise. It was amicably agreed, therefore, that the city's original application as filed on January 20, 1909, should be amended by the elimination of such lands as Mr. Mulholland and I together agreed upon. The amended application as it reaches the honorable the Secretary of the Interior, therefore, should not include other lands than those appearing in subjoined list No. 1, and when so amended it is recommended that the application be granted as necessary to secure and safeguard a sufficient water supply for the Los Angeles Aqueduct now under construction and as falling within the letter and spirit of the act approved June 30, 1906. The lands eliminated from the original application of the city, and which it is agreed shall not appear in the city's amended application to purchase, appear in No. 2 of the subjoined lists."

Since the said report still further eliminations reduce the application to about 12,300 acres. The city has purchased from private parties over 70,000 acres of land in this water-bearing area in pursuance of this plan. The Department finds in favor of this application.

The remaining application, No. 0145, is for channel lands which embraces about 8,000 acres bordering on either side of Owens River from Long Valley Reservoir to the intake, a distance of about 50 or 60 miles. The greater portion of these lands lies immediately below the Long Valley Reservoir. The stated

purpose of acquiring these lands is that the city may control this stream so as to prevent pollution of its waters.

The commissioner in his decision rejecting this application stated:

"It is alleged that these lands are desired for right of way. The testimony shows that for the most part they lie in an uninhabited, rough, deep gorge, and they seem to be desired by the city for no other purpose than to secure absolute control of the channel, so as to prevent possible pollution or contamination of the water flowing therein or other prejudicial conditions. It also appears from the testimony that there are within said lands valuable water-power sites for generating electricity and other purposes which may at some future time be developed. There appears no good reason to fear pollution of the water during its flow in this channel, and should there be the State courts would doubtless afford relief. The department is averse to granting right of way for a river bed which carries water all seasons of the year. In view of the facts as disclosed by the record, I am of the opinion that these lands are not necessary for right-of-way purposes, inasmuch as the city will have the right of use of the Owens River, in common with other owners of water rights, to convey the water to which it is entitled from the Long Valley Reservoir to the point of intake of the aqueduct."

In its brief on appeal the city, regarding this application, replies as follows:

"The commissioner says that 'the department is averse to granting right of way for a river bed which carries water all seasons of the year.' From the Long Valley Reservoir site to Owens Lake, into which Owens River discharges, is a distance, measured along the stream, of about 100 miles. For about 83 miles of this distance the river runs through privately owned lands, held by titles based on Government patent. Of this frontage the city owns about 50 miles. It would seem, therefore, that, so far as Owens River is concerned, there is no departmental policy in the way of approving the city's application. Besides, a policy of the department in the administration of general rights-of-way acts should not, and can not, be applied in construing and carrying into effect a special act passed in behalf of a public purpose, such as the act of June 30, 1906.

"The commissioner also says that 'there are within said lands valuable water-power sites for generating electricity and other purposes, which may at some future time be developed.' The maintenance of privately owned power plants on the river below the Long Valley Reservoir site would conflict with the city's plan for storing the waters of the river at that point, and we submit the Secretary should not disapprove the city's application for these channel lands for the benefit of merely possible enterprises of private parties, which would interfere with the city's public project. On the contrary, the very fact that private enterprises may be established on these lands, the operation of which would interfere with the city's great public project, is a strong argument in favor of giving the city control of these lands. The city of Los Angeles does not want to be at the mercy of power companies or of promoters of power schemes in establishing or operating its aqueduct system, and it is, therefore, urged on behalf of the city that the Secretary approve this application, so that the city may be protected against such interests.

"The Los Angeles Aqueduct is not only a strictly public enterprise, but is one of the largest and most important projects ever undertaken in this country for conserving and utilizing our natural resources in the interest of the people, and the act of June 30, 1906, which was passed in aid of that enterprise, should be construed as favorably to its accomplishment as the terms of the act will permit. Under such construction we submit the decision of the commissioner against the applications of the city involved in this appeal should be reversed, and such applications should be approved by the Secretary of the Interior."

The said act permits the city to purchase, within the designated area, lands "necessary for storage or right of way purposes." In the view of the department, the application for these lands may be considered as fairly within the terms of the act for either of the two purposes named. They may be considered as used for storage purposes in connection with the project if they afford protection for the actual storage of the water in the reservoirs so that it may be transmitted to the city pure and unpolluted. And it is easily seen that the ownership of these lands by the city will tend to give such protection. The said lands may likewise be considered as coming within the terms of the grant for right of way purposes, whether same be used for the conducting of water or the transmission of power in the form of electrical energy. The act clearly contemplated development of power by the city, and the building of telephone and telegraph lines, and the construction of wagon roads and electric railroads if it should desire to do so.

The lands may be put to any of these uses by the city. This project was recognized not only as one for supplying water for the present and prospective needs of the city of Los Angeles and for the sale of water therefrom under stated restrictions, but also for the development and transmission of electrical power.

This grant can not destroy any prior water rights of individuals or corporations, as the grant in only of public lands, the disposition of which was within the legislative power. If the city should fail to use any of the lands for the purposes specified in the grant, such as are not so used will revert to the Government. Controversies arising under this grant between the city and individuals or corporations claiming prior water rights must be left to the courts for adjudication. It is believed that ample protection can be found there, and the proper remedy afforded.

Considering the liberal terms of this act, designed as it was to promote a great public enterprise, it is believed that this application comes fairly within the provisions of the preference right afforded the city by said act. It will accordingly be allowed.

The decision of the commissioner, with reference to the said three applications, is therefore reversed and the record is returned with direction that the maps be carefully compared with the respective lists. If any discrepancy be found between the lists and the maps, proper amendments will be required of the city. Examination should also be made to determine whether all the eliminations agreed upon have been made upon the maps and lists.

This decision will not apply to any lands which were not reserved under the terms of the reclamation act, or to any lands on Bishop Creek, or its branches, in the county of Inyo, if such lands be embraced in the applications. These inhibitions are contained in the act.

Correct lists and maps will be prepared for departmental approval, accompanied by the commissioner's certificate that the lands therein are subject to selection under said act, as interpreted by this decision.

SAMUEL ADAMS, *First Assistant Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1912.

Messrs. CONSAUL & HELTMAN,
Attorneys at Law, Bond Building, Washington, D. C.

GENTLEMAN: The department is in receipt of your motion for rehearing in the matter of departmental decision of January 6, 1912, which denied the application of the Silver Lake Power & Irrigation Co. to intervene in the matter of certain applications by the city of Los Angeles, Calif., to purchase lands under the act of June 30, 1906 (34 Stat., 801). Said motion is also signed by the firm of Copp, Luckett & Pierce, also appearing for the said company. Request is made in behalf of the company that opportunity be given for oral hearing.

The matters set forth in the motion have been very carefully considered, but no reason is seen for disturbing the action heretofore taken or for granting the request for oral argument. Accordingly the motion is denied.

Very respectfully,

SAMUEL ADAMS, *First Assistant Secretary.*

BEFORE THE SECRETARY OF THE INTERIOR—SILVER LAKE POWER AND IRRIGATION CO. V. THE CITY OF LOS ANGELES, CALIF. (INDEPENDENCE 0145)—MOTION FOR REHEARING.

Now comes the Silver Lake Power & Irrigation Co., by its attorneys, Consaul & Heltman, and Copp, Luckett and Pierce, and respectfully moves that the decisions of the honorable First Assistant Secretary of the Interior dated January 6, 1912, dismissing the protest of said company against the allowance of the applications of the city of Los Angeles for the purchase of what are known as channel lands, Independence, Calif., Serial 0145, and allowing said applications to purchase, be reversed, and as grounds for said motion, specifies error in said decision as follows:

1. In holding that the Silver Lake Power & Irrigation Co. has no interest in the lands involved, whereas, as a matter of fact said company has now, and

had long prior to said decisions, pending before the department its application for right of way for power purposes, being Independence, Calif., serial —.

2. In not holding that the possession of valid water rights and the assertion of a claim thereto before the land department by virtue of an application regularly submitted under the act of February 15, 1901, gave said Silver Lake Power & Irrigation Co. a standing equal to that of the city of Los Angeles and entitled said company to protection in its rights.

3. In holding, in the letter addressed to counsel that because other protests by said Silver Lake Power & Irrigation Co., against the applications of the city of Los Angeles, covering an entirely different subject matter, had been decided adversely to the contentions of the company, the present protest which was intended to protect valuable interests, could not be entertained.

4. In holding in effect, in the decision reversing the honorable commissioner's decision of May 5, 1911, as to these channel lands, that there is merit in the contention of the city of Los Angeles that title to these lands is necessary to protect the waters of Owens River from pollution, when it clearly appears that the granting of the right of way to the Silver Lake Power and Irrigation Co. and the construction of its works, will most effectually protect the water, still further purify it, and return it to the stream bed undiminished in quantity for the use of the city.

5. It was error to assume, in the disposition of the applications of the city of Los Angeles, that the act of Congress of June 30, 1906 (34 Stat. 801–803), made it mandatory to grant whatever applications were presented in disregard of the rights and enterprise of individuals and citizens of the Owens Valley generally and notwithstanding the utter lack of real necessity for the grant of these lands to the city.

6. It was error to hold, substantially, that the opinions of the city engineers should govern as to the extent of the ground and the amount of land necessary for the development of the city's project, and not to hold that the department should exercise a sound discretion to determine for itself whether private rights would be interfered with and whether valuable utilities absolutely unnecessary to the full enjoyment of the grant should not be reserved.

7. It was error not to hold specifically, if it was thought that the city should be allowed to purchase the channel lands, that any approval of its application or patent issued therefore, should contain a clause reserving a right of way under the act of February 15, 1901.

8. It was error not to hold that the application of the Silver Lake Power & Irrigation Co., Independence Serial —, should have been approved and any application by the city of Los Angeles if allowed, be allowed subject to said right of way.

9. It was error to hold in effect, that the "channel lands" should be patented to the city of Los Angeles merely for the purpose, as disclosed by the brief of the city, quoted in the decision, of preventing private enterprises utilizing the waters in transit, so to speak, between the Long Valley Reservoir and the point of the diversion by the city into its acqueduct. This error is plain, for unless such enterprises have the legal right to use that water, then they can not use it. If they have the water rights, then the United States should not seek to annul the same by patenting these lands to the city, for the express purpose mentioned.

ARGUMENT.

The Silver Lake Power & Irrigation Co. has been for some time prosecuting active construction and surveying work on the upper portion of the ground in controversy, known as the "channel lands," and on —, 1911, it filed in the local land office at Independence, Calif., its application for right of way under the act of February 15, 1901. There has been filed in the department in connection with this matter a map showing in detail the manner in which the company proposes to utilize its water rights here and it can be readily seen that the completion of the project will be of great value to that locality without in any way interfering with the proper use by the city of Los Angeles of the water flowing down the channel.

The Silver Lake Power & Irrigation Co. relying on its water appropriations and on the decision of the honorable Commissioner of the General Land Office of May 5, 1911, has gone on with its enterprise, and to deny that it has any interest in the subject matter would be to ignore its pending application and its unquestionable right to be duly heard.

There is nothing in the act of Congress on which the application of the city for these channel lands is based which in any way suggests or requires that any and all claims made by the city should be allowed irrespective of the rights of private citizens. It was doubtless intended by Congress that the applications of the city should be considered in connection with any other rights and approved or denied according to the facts as developed, and in a manner to subserve both the city's interests and those of the citizens of that region.

It certainly was not intended that anything the city applied for in the way of a right of way or of a grant of lands should be allowed, irrespective of the fact that the application covered something which it had been shown was unnecessary for the purpose defined by the act of Congress.

The case of the Silver Lake Power & Irrigation Co. *v.* City of Los Angeles, reported in 37 L. D., 152, covered matters not here in issue. The applications then filed by the company contemplated the use of water for irrigation which might and likely would interfere with the city's project. The application now pending contemplates the development of power solely and in connection therewith; the waters of the stream to the extent the power company controls them will be protected from pollution and be returned to the river channel far above the intake of the city's aqueduct; so that there will be no interference whatever with the plans for the development of a water supply for the city of Los Angeles.

We think a clear distinction exists between this application and the ones formerly filed which covered both irrigation and power, and under which, if allowed, it might be thought the city's enterprise would be endangered.

Besides, as we have already stated, the decision from which the city appealed took the view that control of these lands by the city of Los Angeles for the alleged purpose of preventing pollution was unnecessary and would result in locking up indefinitely a natural resource which it is now possible to develop under our application. Such use would unquestionably be of great value to that locality.

It does not seem reasonable that the Government should in this manner, for an indefinite period, prevent the development of the power possibilities of this portion of the river claimed upon no better ground than is advanced by the city. The chance of water contamination is very small indeed, and the prospects are that the city would not for many years to come exercise any more supervision over this portion of the river than it does now. Its right to the ultimate use of the water is recognized, and it is without doubt true that the Silver Lake Power & Irrigation Co., if granted a permit, would heartily cooperate to prevent any possible contamination. Indeed, its tunnels, flumes, and pipe lines would have a marked effect in the work of purification.

It should be observed further in this connection that the right of way applied for by the company covers but a portion of the lands embodied in the "channel lands" application, and that there could be no possible interference with the full and free enjoyment of all the city's rights. The company, under its permit, would be entitled merely to the use of the water for a limited distance. It would be bound to return the water to the bed of the stream at the end of its right of way, undiminished in quantity and unaffected, except by purification, in quality. It requires a considerable exercise of imagination to invent some real reason justifying the approval of the city's application, unless it is proposed to grant to it the right to develop all the utilities on the Owens River to the exclusion, absolutely, of private enterprises.

It is true, in a sense, that the city of Los Angeles in this project proposes to conserve utilities for the general benefit of a large and growing community, but it is evident that the matter has gone far beyond what it was originally intended it should, and it is now proposed to monopolize all the water power in the Owens Valley without the least regard to the rights of the citizens there, who, undoubtly, should be allowed to participate to a small extent, at least, in the resources which are to be developed at their own doors. They should not be compelled to go into the courts unnecessarily to protect themselves against a powerful municipal corporation like the city of Los Angeles. The department should bear these local interests in mind and administer the act with a due regard to the well-being of all parties concerned.

The only possible use the city might want to make of these lands is for the development of power, and it does not appear what connection such use could have with the development of a water supply for the city of Los Angeles. The only use so far as is shown or can be seen would be to sell it, as the Silver Lake Power & Irrigation Co. proposes.

We do not understand that the act is intended to authorize the city to acquire rights for general commercial purposes, and to enter the local market as competitors with private enterprise for revenue purposes solely.

The city further down the stream possesses power sites capable of the development of at least 90,000 electric horsepower, sufficient for its needs as a city for many years to come, and likely never to be required to its full extent, even were the wildest dreams of the most enthusiastic boomer completely realized.

While it is desirable to conserve the natural resources to the fullest extent, allowing a reasonable present use thereof, it is not wise to oppressively mortgage the present for a future emergency which may never materialize.

It is unquestionably true that the Long Valley Reservoir will not be utilized or other works constructed for miles down the river for many years to come, and it is possible that the necessity therefor will never arise. Meanwhile, wherever possible, local enterprise should be encouraged, particularly when such activities in no sense interfere with the full privileges granted the city by the act of Congress.

There is nothing in the application of the Silver Lake Power & Irrigation Co. antagonistic to the fullest development of the project of the city of Los Angeles.

That company has no objection to the acquirement of title to these lands provided that such title be granted subject to its use of right of way for the purposes of generating electric power. The company has no desire to appear as opposing any grant which the city may reasonably ask or receive. It simply wants to operate a power plant without being compelled to go into the courts to condemn a right of way. It feels that an adverse decision by the Department of the Interior will prejudice its case, and there being no real necessity, present or future, for the approval and patenting of these lands to the city of Los Angeles, it should be permitted to proceed to the immediate utilization of its water rights.

We suggest that in our opinion there could be no valid objection to the approval of our company's application for right of way and thereafter the granting of the fee in the land to the city. This would give each what it asks—the city the right to control the land subject to that use, and prevent unauthorized occupancy and possible contamination of the water, and the power company the right to occupy to the extent of its legitimate use for the development of electric power. Neither use need interfere with the other.

The claims of the city of Los Angeles under the act of Congress of June 30, 1906, have been constantly expanding until now they embrace practically every resource capable of being developed by the waters tributary to the city's water system. The plans of its engineers contemplates not only the gathering and storage of a water supply greatly in excess of the possible needs of the city, even allowing for a phenomenal increase in its population, but it is proposed to enter upon the sale of surplus water for irrigation and the sale of a vast amount of electrical power generated in the rapid descent of this water. If this is not true, there would appear to be no reason for the approval of certain of the rights of way and of certain of the applications for the purchase of the absolute title to large bodies of the public lands.

We believe that it is within the sound discretion of the Secretary of the Interior to examine critically the various applications coming before him, and to reject all those which in his judgment are not necessary to the city under a reasonable construction of the law.

The act does not make it mandatory upon the Secretary to approve any application presented, neither does it make the opinions of the city engineers the sole test for determining whether an application for lands should be approved.

The opinions of these engineers are valuable only as they are based upon facts which satisfy the judgment as to the city's needs.

In the case of these channel lands the only reasons for the application are that the city should control them in order to prevent pollution of the water.

This claim is effectually answered in the decision of the honorable Commissioner of the General Land Office of May 5, 1911, wherein it is said, among other things:

"It is alleged that these lands are desired for right of way. The testimony shows that for the most part they lie in an uninhabited, rough, deep gorge, and they seem to be desired by the city for no other purpose than to secure absolute control of the channel so as to prevent possible pollution or contamination of the water flowing therein or other prejudicial conditions. It also ap-

pears from the testimony that there are within said lands valuable water-power sites for generating electricity and other purposes which may at some future time be developed. There appears no good reason to fear pollution of the water during its flow in this channel, and should there be, the State courts would doubtless afford relief. The department is adverse to granting right of way for a river bed which carries water all seasons of the year."

In its appeal and in its brief in support thereof, the city made no real showing of substantial reasons why the commissioner's decision should be reversed. It did not show how a denial of its application would injure the city or how the utilization of the power possibilities in this deep, rough gorge would in any way interfere with the full development of all the legitimate projects of the city under the act of Congress. About all the appeal and argument amounts to is a declaration that a special act should not be construed in a reasonable manner, but that being the beneficiaries under such an act the city should be given anything its engineers fancy the city wants, notwithstanding it has shown no need, and the allowance of its application would hamper and restrict the development of enterprises, local in their nature.

While in this argument we have shown that the city has not, and probably never will have, any real need for these channel lands, it must be understood, as stated elsewhere, that the Silver Lake Power & Irrigation Co. is not opposed to the grant, providing it is limited in such a manner as would allow opportunity for the development of a portion at least of the natural resources of that locality by those having an interest in the general well-being of the citizens there, and for the benefit of the latter.

It seems a strained construction of the law which would permit the monopolization of the waters of a whole community and the forces generated thereby and carry them to a far distant point, there to be enjoyed by a different people.

Certainly the citizens of the watershed where these forces are gathered should be given some share in the results of the conservation thereof.

Wherefore it is prayed that the decision of January 6, 1912, be reversed, that the application of the Silver Lake Power & Irrigation Co. be approved, and that if the application of the city of Los Angeles for these "channel lands" be considered at all it be allowed reserving a right of way in connection with the application of the power company under the act of February 15, 1901.

Respectfully submitted.

——— ———,
——— ———,
By ——— ———,
Attorneys for Silver Lake Power & Irrigation Co.

DISTRICT OF COLUMBIA, *ss:*

Charles C. Heltman, being first duly sworn, deposes and says that he is one of the attorneys for the Silver Lake Power & Irrigation Co.; that he is familiar with the contents of the foregoing motion for rehearing and argument in support thereof, and that said motion is not made for delay, but in good faith for the purpose specified therein.

——— ———.

Subscribed and sworn to before me this 6th day of February, 1912.

———,
Notary Public.

Service of a true copy of the foregoing motion for rehearing and argument in support thereof acknowledged this ——— day of February, 1912.

R. WOODLAND GATES,
Attorney for the City of Los Angeles.

Mr. KEENER. Mr. Chairman, I would like less than 30 seconds——

The CHAIRMAN. Very well.

Mr. KEENER. I appear here as representative of the citizens of the Inyo-Kern Valley and Fremont Valley. I wish to call the attention of the committee to the statements made by Mr. Edgar and Mr. Fritz before the House committee. I wish to get that into this record.

The CHAIRMAN. The committee can obtain these statements in the House hearings.

STATEMENT OF HON. HENRY Z. OSBORNE, MEMBER OF CONGRESS FROM CALIFORNIA.

Mr. OSBORNE. Mr. Chairman and gentlemen of the committee, I am not going to deal in any way with the technical features of this matter because there are others better qualified to handle them than myself. The bill under consideration (H. R. 406), known as the Los Angeles aqueduct right-of-way bill, is for the purpose of supplementing and carrying out the intenton of an act of Congress June 30, 1906, providing for rights of way through public lands of the United States for the water supply of Los Angeles and for the transmission of hydroelectric power to be generated in connection with the facilities afforded by the aqueduct. This bill received the approval of the Senate in the Sixty-fifth Congress, when it was introduced by Senator Johnson, of California, as S. 4023, and passed, and in that Congress, after full hearings of all interested parties by the House Public Lands Committee, it was by that committee unanimously favorably reported to the House, but that being in the last days of the Congress, it was impossible to get it up for consideration by the whole House, owing to the great press of the closing of legislative business.

The present bill, as it has passed the House of Representatives in this Congress and is before you, is identical in substance with that which passed the Senate last Congress, having been amended in the House only by way of limitations upon the grants to the city of Los Angeles as desired by those who feared possible injury. In no respect have the privileges of the city been increased by the present bill.

Briefly, the purpose of the bill is to provide an adequate water supply for the people of Los Angeles, who now number 577,906 as against less than 200,000 when the work on the aqueduct was started in 1906. The water-supply project is designed to meet the necessities of a very large city, such as is clearly indicated by the phenomenal growth just mentioned.

The aqueduct has now been fully constructed and is in operation. It is one of the most extensive aqueduct systems in the United States, and, indeed, in the history of the world. It is about 240 miles long and carries a river of water, having a capacity of 20,000 miners' inches. For most of its extent it is cement lined and covered, and more than 50 miles of it is tunneled through the solid rock of mountains. It passes mostly through a desert and mountainous country of little value.

The water it supplies to the city, and all which the city purposes to use, is owned by the city under the laws of the State of California, and the city's title to the water is in no way involved in this legislation.

The city has expended upon the aqueduct $24,000,000, and upon the electric system $8,000,000, and $11,000,000 more has been voted for the purpose of distributing the electric energy.

In the construction work it was found necessary for geologic and economic reasons to deviate from the right of way granted by the act of 1906 to the extent of a few feet in some places and several hundred feet in others, and one of the objects of this bill is to make

the grant conform to the way actually used, any lands or rights of way formerly granted but not used to revert to the Government. In addition, there is asked a right of way for certain reservoir sites, dam sites, and transmission lines through Government lands. All of these ways are 250 feet wide. They in no way constitute a barrier to other transmission lines or irrigation lines. The bill fully protects the rights of all persons and corporations having claims upon the various lands.

It may be mentioned that from the incipiency of this great water system it has met with persistent opposition, largely from certain power companies, having, naturally, private financial interests to serve. The measure is one for the benefit of a populous and fast-expanding city, and is entitled to the consideration of the Congress upon that ground. The opposition has manifested itself in many ways, and largely in litigation and opposition to congressional action. There has been no time in several years when the city was not in the courts of California or the Federal courts, in contests with various interests. It has, however, succeeded in the main purpose of providing a water supply, and always has been willing to satisfy every legal or moral demand upon it. I have never been able to understand the reason for this persistent opposition. The fact is that the demand for power in southern California has always exceeded the supply, which has been greatly increased from time to time by various power companies and by the city itself, and the probability is that in the future it will take all the power which the city and the private companies can generate.

The people of Los Angeles have sent here four representatives to attend these hearings. They are Mr. W. B. Mathews, counsel for the public service board, which has the aqueduct in its keeping; the Hon. Ralph L. Criswell, a member of the City Council of Los Angeles, and chairman of the committee on public service; Mr. William Mulholland, chief engineer of the aqueduct, who had charge of the laying out and performance of that great work; and Mr. E. F. Scattergood, chief electrical engineer.

This measure was introduced in 1906, when Col. Roosevelt was President, and it commended itself to his broad conception of great enterprises, and he did a great deal in the way of assisting and smoothing its way through, and there is, in the House hearings, on pages 7 and 8, a letter from President Roosevelt which I would like to incorporate in what I have had to say, and I leave this matter in the hands of the committee satisfied that the broad purposes, affecting the water supply of a city now of nearly 600,000 people, and one which undoubtedly will reach within a few years a very great increase, will be thoroughly and fairly considered by this committee, and I am sure that the committee will give all of these things its sympathetic consideration.

Mr. RAKER. May I ask the captain a question, to clear up the record?

The CHAIRMAN. Certainly.

Mr. RAKER. The captain stated that I took up some little time. I was the chairman of the House subcommittee, as the captain will remember, when the bill was considered, and was instrumental in getting all of these people together during the Sixty-sixth Congress,

and was ordered by the committee to report the bill out to the House, which was done. During the hearings in the Sixty-fifth Congress and the Sixty-sixth Congress upon this bill, the captain will remember that my purpose was to give Los Angeles a right to protect its interest and at the same time protect the irrigationists where there would be no detriment to the city of Los Angeles, and whereby the irrigationists and farmers should not be deprived of their rights, but, under the bill, would have the fullest possibility of development of the territory involved. Is not that correct?

Mr. OSBORNE. I think that was the gentleman's intention. In complicated arguments of this kind it is sometimes very difficult to tell just what one does mean, but I think that is probably the gentleman's intention.

Mr. CONSAUL. In order to put this matter correctly in the record, inasmuch as the act of 1906 has been referred to, for the purpose of showing the extreme haste with which Congress passed, in 1906, the original grant for the city, I wish to call your attention to the fact that Senator Flint introduced that bill in the Senate on June 12, 1906. It was passed by the Senate on June 13, 1906, and passed the House and was signed on June 30, 1906, all within the period of 18 days.

Mr. OSBORNE. May I have permission to add to my remarks some figures in regard to hydroelectric-power requirements at Los Angeles?

The CHAIRMAN. You may have that privilege.

(The figures referred to were subsequently furnished and are here printed in full as follows:)

The city of Los Angeles has constructed hydroelectric power plants and transmission lines along its equeduct at an aggregate cost to-day of $6,500,000, and expended $3,500,000 for distribution lines and works in the city. It has a contract for the purchase of the Southern California Edison Co.'s distributing system within the city limits for $11,000,000 for which bonds of the city have been approved by the voters. Also $3,500,000 of additional bonds for further immediate power development.

The electric power demand within Los Angeles for the present year, excluding electric railway uses, is estimated at approximately 100,000 horsepower, or more than 300,000,000 kilowatt hours for the year. Of this amount the municipal plants will furnish 70 per cent.

The city having thus undertaken to supply electric service within its limits, exclusive of railway requirements, must necessarily provide power developments to meet the present and the future demands.

The ultimate total of 245,000 horsepower which the city proposes to develop along its aqueduct, along the Owens River Gorge, and small amounts in some of the streams tributary to its aqueduct water supply, will deliver 217,000 horsepower at the city.

Los Angeles hopes to be able to develop and transmit to the city all of this power within five or possibly six years, as otherwise there will not be sufficient to meet the rapidly growing demands, which would seriously retard commercial and industrial development, not only of the city itself but of that general portion of the Southwest of which Los Angeles is the active center and seaport.

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The CHAIRMAN. I take it for granted there are no other witnesses and that these hearings may be considered concluded.

(Whereupon the committee adjourned.)

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